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Supreme Court of the United States

OCTOBER TERM, 1962

No. 112

**JAMES H. GRAY, AS CHAIRMAN OF THE GEORGIA
STATE DEMOCRATIC EXECUTIVE COMMITTEE,
ET AL., APPELLANTS,**

vs.

JAMES O'HEAR SANDERS.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA**

FILED MAY 11, 1963

PROBABLE JURISDICTION NOTED JUNE 18, 1963

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[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION**

Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

versus

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

COMPLAINT—Filed March 27, 1962

To the Honorable, The Judges of the District Court of the United States for the Northern District of Georgia:

This action is a civil case brought under Section 28, United States Code 2201 and 28 United States Code, 2202, seeking relief by declaratory judgment; under 42 United States Code 1983, seeking interlocutory and permanent injunction and equitable relief for the deprivation of constitutional rights, privileges and immunities. Jurisdiction of this court is founded upon the provisions of Section 28, United States Code 1343. This is a proper case for determination by a Bench composed of three judges, as provided in 28 United States Code 2281, inasmuch as it seeks interlocutory and permanent injunction to restrain the enforcement, operation and execution of statutes of the State of Georgia by restraining an officer thereof, the Secretary of State, from complying with the provisions of such statutes.

[fol. 2] Statement of the Complaint

1.

Petitioner is James O'Hear Sanders, a citizen of the United States and of the State of Georgia, and a resident of Fulton County, which said County is located within the Atlanta Division of the Northern District of Georgia.

2.

Defendants are George D. Stewart, who is a resident of Fulton County, residing within the Atlanta Division of the Northern District of Georgia, and James H. Gray, who is a resident of Albany, Dougherty County, Georgia, residing within the Albany Division of the Middle District of Georgia, and said defendants are subject to the jurisdiction of this Court.

3.

Defendant, James H. Gray, is presently Chairman of the Georgia State Democratic Executive Committee, hereinafter called Defendant Committee, and the defendant, George D. Stewart, is presently the Secretary of said Committee—this action being brought against them in their official capacities, for relief against them and their successors in office.

4.

Defendant Committee is an unincorporated association composed of persons residing throughout the State of Georgia and is the governing body of the Defendant Democratic Party of Georgia (hereinafter referred to as Defendant Party). Defendant Party is an unincorporated association composed of thousands of residents residing throughout the State of Georgia.

5.

The Defendant Committee is recognized under pertinent statutes of the State of Georgia as the governing body of [fol. 3] Defendant Party, and is charged by such statutes

with certain duties and responsibilities, as more fully hereinafter set forth.

6.

This action is brought against Defendant Committee and Defendant Party for the purpose of enforcing certain constitutional rights, privileges and immunities of the Plaintiff. By reason of the number of persons comprising defendants Committee and Party, it is impracticable to serve each such person individually, but service upon each of the two said defendants may be made by serving the Chairman and Secretary thereof, as hereinabove set forth, and said defendants will be adequately represented in this action by and through its aforesaid executive officers.

7.

Defendant Ben W. Fortson, Jr., is a resident of Wilkes County, Georgia, but maintains a residence in Fulton County in the Atlanta Division of the Northern District of Georgia. Said defendant is presently Secretary of State of the State of Georgia.

8.

Plaintiff is within that class of persons qualified as electors within the meaning of Article II, Section I, paragraphs I-IV of the Constitution of Georgia (Section 2-701 through 2-704, Georgia Code Annotated), said constitutional provisions appearing in Exhibit "A" hereto.

9.

Plaintiff is qualified to vote in primary and general elections in Fulton County, Georgia, is a member of the Democratic Party of Georgia, intends to vote in the Democratic Primary election to be held within the State of Georgia in 1962, and intends to support the nominees of such Primary Election in the General Election to be held [fol. 4] in Georgia in 1962.

10.

Defendant Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for nomination of candidates for the United States Senate and the following state offices: Governor, Lieutenant Governor, Secretary of State, Justice of the Supreme Court, Judge of the Court of Appeals, Attorney General, Comptroller General, Commissioner of Labor and Treasurer.

11.

Defendant Committee, as the governing body of Defendant Party, and in accordance with the provisions of Section 34-3212, Georgia Code Annotated, is planning to supervise the holding of said primary election, to tabulate and consolidate the ballots cast therein, and to certify, in accordance with Section 34-3215.1, Georgia Code Annotated, to the defendant, Fortson, as Secretary of State, the names of persons determined by said Committee to have been nominated in said primary election. The statutes referred to hereinabove are set out in Exhibit "B".

12.

Defendant Fortson, as Secretary of State, in accordance with the provisions of Section 40-601(7) Georgia Code Annotated (set out in Exhibit "C") is intending to furnish to the several ordinaries of the State of Georgia official ballots and election supplies, and to certify to said ordinaries, respectively, the names of candidates for the aforesaid offices nominated in the Democratic Primary election.

13.

Under the provisions of Section 34-1904 Georgia Code Annotated (set out in Exhibit "D") the several ordinaries will submit such ballots and the names of those candidates [fol. 5] so certified by Defendant Fortson, as Secretary of State, to the electors of the State of Georgia for their choice in the general election that will be held in Georgia for the aforesaid statewide offices on the Tuesday after the first Monday in November, 1962.

14.

Nomination as candidate for United States Senator and for the aforesaid for statewide offices by Defendant Party is the equivalent of election to such office in Georgia and no candidate for any of the aforesaid offices other than the nominee of defendant Democratic Party has been elected to office since 1872.

15.

Petitioner contends that the means of tabulating the popular vote and, specifically, the means of tabulating the vote which he as a voter in Fulton County intends to cast in the forthcoming Democratic Primary election (as governed by the provisions of Section 34-3212 Georgia Code Annotated) is arbitrary, discriminatory and unconstitutional, in that the intended acts of defendants in compliance with such statute is a deprivation of his constitutional rights and a denial to him of the equal protection of the laws, all as more fully hereinafter set forth.

16.

The means of tabulating the votes to be cast in the forthcoming Democratic Primary election, including the vote to be cast by petitioner, is known as the County Unit System, being incorporated in the statute law of this State by the Act of 1917 (Georgia Laws 1917, pages 183 through 189, codified as Sections 34-3213 through 34-3218 Georgia Code Annotated), said act being popularly referred to as the Neill Primary Act. The salient provisions thereof are as follows:

[fol. 6] " . . . Candidates for nominations to the above named offices who, receive, respectively, the highest number of popular votes in any given County shall be considered to have carried such County, and shall be entitled to the full vote of such County on the County Unit basis, that is to say, two votes for each representative to which such County is entitled in the lower House of the General Assembly . . . " (Georgia Code of 1933, Section 34-3212, codified from Georgia Laws 1917, pp: 183-189).

"... the majority of the County Unit vote shall be the determining factor for the nomination of United States Senator and Governor and ... the plurality of the County Unit vote shall be the determining factor for the nomination to all other offices named in Section 34-3212." (Georgia Code of 1933, Section 34-3213, codified from Georgia Laws, 1917, pp. 183-187).

The composition of the lower House of the General Assembly of Georgia is fixed constitutionally as follows:

"The House of Representatives shall consist of representatives apportioned among the several counties of the State as follows: To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each."

(Article III, Section III, paragraph I of the Constitution of Georgia of 1945, codified as Section 2-1501 Georgia Code Annotated.)

Accordingly, under the County Unit System, the eight largest counties by population have six unit votes each; the 30 next largest by population have four unit votes each; and the remainder, being 121 in number, have two unit votes each.

17.

Fulton County, wherein petitioner resides and intends to cast his vote in the forthcoming Democratic Primary, is the most populous county in Georgia, having according to the 1960 United States Census a population of 556,326.

18.

According to the aforementioned source, the total population of Georgia in 1960 was 3,943,116. The residents of Fulton County comprised in 1960 14.11% of the total population of the State of Georgia.

[fol. 7]

19.

Under the County Unit System, the six unit votes of Fulton County constitute 1.46% of the total of 410 unit votes of all 159 counties of Georgia, or one-tenth Fulton County's percentage of statewide population.

20.

Echols County is the least populous county in Georgia, having a population in 1960 of 1,876 or, stated by percentage, .05% of the State's population in 1960.

21.

Under the County Unit System, the unit vote of Echols County is .48% of the total unit vote of all counties in Georgia, or ten times Echols County's statewide percentage of population.

22.

DeKalb County is the second most populous county in the State of Georgia, having a population in 1960 of 256,782, representing 6.51% of the total population of Georgia, and having a unit vote of six, equal to that of Fulton County.

23.

Petitioner's vote, to be cast in Fulton County, is drastically diluted by tabulation and consolidation of votes under the County Unit System, as illustrated by the following examples:

A. The 1,876 residents of Echols County (1960 census) have two unit votes, or $\frac{1}{3}$ of the unit votes of the 556,326 residents of Fulton County (1960 census). One unit vote in Echols County represents 938 residents, whereas one unit vote in Fulton County represents 92,721 residents. Stated differently, one resident in Echols County has the equivalent influence in the nomination of candidates in the Democratic Primary under the County Unit System of 99 residents in Fulton County.

[fol. 8]

24.

Attached to this complaint are Exhibits "F" and "G", disclosing the population of each county in Georgia for the years 1920, 1930, 1940, 1950 and 1960, the respective unit votes of each county, and a figure designated "disparity factor," representing the weight, according to population, of one unit vote in each county as compared to one unit vote in Fulton County; and Exhibits "H" and "I", disclosing the "disparity factor" for each county in Georgia as related to the votes cast in the most recent Democratic primary election held in 1958, in which a governor was nominated.

25.

Since the enactment of the Neill Primary Act in 1917, the population of Fulton County has steadily increased comprising of the total population of the State of Georgia 8.0% in 1920; 10.9% in 1930; 12.5% in 1940; 13.7% in 1950; and 14.11% in 1960. Notwithstanding such increase, Fulton County has been accorded but 1.46% of the unit vote in each statewide primary election held by the Defendant Democratic Party.

26.

The cited increase in population of Fulton County is indicative of similar increases in population of the urban communities of the State of Georgia since passage of the Neill Primary Act in 1917, as evidenced by the combined populations of the eight largest counties of Georgia according to each decennial United States Census since 1920 as follows:

| Year | Total Population of State of Georgia | Combined Population of Eight Largest Counties of Georgia (6 unit vote counties) | Proportion of Population of Eight Largest Counties to Total Population |
|------|--|---|---|
| 1920 | 2,895,832 | 620,668 | 21% |
| 1930 | 2,908,506 | 787,305 | 27% |
| 1940 | 3,123,723 | 938,958 | 30% |
| 1950 | 3,444,578 | 1,227,161 | 36% |
| 1960 | 3,943,116 | 1,626,734 | 41.35% |

[fol. 9] Accordingly, although the eight six unit counties comprise among themselves 41.35% of the population of Georgia, their total of unit votes (48) constitutes but 11.7% of the entire unit votes of the State of Georgia.

The urban population of the State of Georgia has continuously increased since passage of the Neill Primary Act in 1917, as evidenced by the following:

| Nature of Population | 1920 | 1930 | 1940 | 1950 | 1960 |
|----------------------------|------|------|------|------|------|
| Urban | 25.1 | 29.6 | 34.0 | 45.3 | 55.3 |
| Rural | 74.9 | 70.4 | 66.0 | 54.7 | 44.7 |

(Source: United States Census, "Urban Population" was defined, prior to 1950, as those inhabitants of incorporated areas of 2,500 or more; current definition eliminates the distinction between incorporated and unincorporated areas.)

The disparity created by the County Unit System will continue to increase with the increase of urban population in the State of Georgia.

1

27.

The effect of the County Unit System is to reverse all votes in any one county cast against a candidate receiving the plurality of votes in such county, and to accord in favor of such candidate all votes adversely cast. For example, in gubernatorial primary of 1954, the successful candidate received 36.3% of the total popular vote, said percentage tabulated and consolidated under the County Unit System producing 73.6% of the total unit votes of the several counties. The said candidate received 25% of the votes cast in Fulton County in said primary, which percentage constituted a plurality. Accordingly, all six of Fulton County's unit votes were tabulated in favor of said candidate, notwithstanding the fact that 75% of the electors of Fulton County had cast votes adverse to his candidacy.

[fol. 10]

28.

Petitioner has no effective recourse against the dilution of his vote and against the cited disparities and inequali-

ties of the County Unit System in the nature of legislative action, inasmuch as the composition of the lower House of the General Assembly of Georgia is the basis upon which the County Unit System is patterned (paragraph 17, supra) and it cannot reasonably be anticipated that the members thereof, exercising the same degree of control over the affairs of the House of Representatives as their respective counties exercise in the nomination of candidates to statewide offices in primary elections, will be inclined voluntarily to diminish their own political influence or that of their constituents.

29.

The disparity created by the County Unit System between the weight and influence of the vote of petitioner, as a resident of Fulton County, and the votes of others throughout the State of Georgia constitutes the deprivation of his right of franchise and the denial of his right to vote. The County Unit System abridges the right of petitioner and others in Fulton County to vote, while it increases the weight and influence of votes cast in every other county of the State. This disparity, the result and effect of statutes of the State of Georgia, is the denial to this petitioner by the State of Georgia of equal protection of the laws.

30.

*The provisions of Sections 34-3212 through 34-3218 Georgia Code Annotated, governing the counting, tabulation and consolidation of votes cast in primary elections within the State of Georgia on the County Unit basis, and those provisions thereof requiring the certification and publication of the names of parties deemed nominees on the basis of the County Unit System, are unconstitutional, void and [fol. 11] violative of the following provisions of the Constitution of the United States:

(a) Section 1 of the 14th Amendment thereto, in that, as applied to a primary election for nominees for United States Senator or any of the aforesaid State offices they constitute the denial by the State of Georgia to persons

within its jurisdiction and to this plaintiff of equal protection of the laws.

(b) Said County Unit System provisions, as they are applied to primary elections to nominate candidates for United States Senator, are in violation of the 17th Amendment to the Constitution of the United States, which guarantees that the Senators from each State shall be "elected by the people thereof."

31.

Said Sections 34-3212 through 34-3218, Georgia Code Annotated, as applied to primary elections for nomination of United States Senator and statewide offices constitute discrimination against this petitioner and places him in a class of persons discriminated against—all without justifiable or reasonable basis. Said statutes of the State of Georgia create arbitrary and unconstitutional classifications among voters of the State based solely upon geographic location of residents and character of domicile (i.e., urban or rural) and deprive this petitioner, as a resident of a populous urban county of his basic and constitutional rights.

32.

The provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated, governing the counting, tabulation and consolidation of votes on the County Unit basis, as applied to primary elections, is violative of that provision of Section 1 of the 14th Amendment of the Constitution of the United States that no State shall deprive any person of "... liberty or property without due process of law"—the dilution, diminution and abridgement by virtue of said statutes of plaintiff's vote and of his right to vote con-
[fol. 12] stituting deprivation of plaintiff's liberty and property by the State of Georgia without due process of law.

33.

Petitioner brings this action to prevent defendants from carrying out the unconstitutional and void provisions of

the County Unit System by complying with the provisions of Section 34-3212 through 34-3218, Georgia Code Annotated, in the forthcoming Democratic Primary election, and shows to the Court that unless defendants be restrained by interlocutory and permanent injunction from acting in accordance with said provisions, and unless said provisions be declared by this Court to be unconstitutional and void, petitioner's basic and constitutional right to vote will be abridged and denied him. This section is brought by petitioner on his own behalf and on behalf of others similarly situated.

34.

Petitioner is without adequate remedy at law, inasmuch as the Supreme Court of Georgia in the case of *Cor v. Peters, et al.*, 208 Ga., 498 (Appeal dismissed, 342 U.S. 936; 96 L. ed., 697 (1951) has held that an action at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System.

35.

Plaintiff is moving at this time in order to prevent the use of the County Unit System in the forthcoming primary by asserting its constitutional invalidity in sufficient time to prevent this bill from becoming moot because of the prior action by the defendants in conformity with the statutes establishing and enforcing the County Unit System as herein pled. If the equitable jurisdiction of this Court is not invoked within time, or unless this plaintiff's rights are not declared in advance of the holding of the primary, the plaintiff's constitutional rights will have been abridged and under the previous decisions of the Supreme Court of the United States, he will have no equitable remedy or redress.

[fol. 13] Wherefore, petitioner prays:

(a) That this, his bill in equity for interlocutory and permanent injunction and petition for declaratory judgment, be sanctioned and ordered filed;

(b) That defendants be required to show cause on a stated date why the relief herein prayed for should not be granted;

(c) That a Court consisting of three judges be convened at the earliest possible date to hear and determine the matters herein;

(d) That interlocutory and permanent injunction issue against each of the defendants, restraining and enjoining them as follows:

1. That the Defendant Party be restrained and enjoined from tabulating ballots cast in the forthcoming Democratic Primary election to be held September 12, 1962 and in any primary election hereafter conducted by said Defendant Party on the basis of the County Unit System; that it be restrained and enjoined from selecting any nominee on the basis of ballots cast in any primary election hereafter held on the County Unit System; and that it be enjoined and restrained from publishing or certifying, by and through its officers or executives, the nomination of any candidate for the aforesaid state offices on the basis of the County Unit System;

2. That the defendants, James H. Gray and George D. Stewart, in their representative capacities as officers of the defendant Committee, and their successors in office, be enjoined and restrained from conducting or governing any primary election on the County Unit basis, from supervising the tabulation and consolidation of votes cast in any primary election on the County Unit basis, from certifying and publishing the names of any candidates deemed nominated in any primary election conducted on the County Unit System, and from giving force and effect to those provisions of the said Neill Primary Act shown herein to be void and unconstitutional.

3. That defendant, Ben W. Fortson, Jr., as Secretary of State, and his successors in office, be enjoined and restrained from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide offices who shall have been nominated or

deemed selected pursuant to the tabulation and consolidation of votes cast in any primary held by Defendant Party under the County Unit System; and that he be further enjoined and restrained from furnishing to the several ordinaries of the State of Georgia official ballots and other election supplies whereon nomination under the County Unit System is recognized.

(e) That the Court issue its declaratory judgment holding the aforesaid provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated to be void and unconstitutional insofar as the cited sections provide for the nomination by Defendant Party of any candidate for United States Senator or statewide office under the County Unit System;

(f) Petitioner further prays for such additional relief as shall to equity and justice appertain.

Heyman, Abram, Young, Hicks & Maloof, By:
Morris B. Abram, By: Maurice Maloof.

[fol. 15] *Duly sworn to by James O'Hear Sanders, jurat omitted in printing.*

[fol. 16]

EXHIBIT A TO COMPLAINT

2-701. Paragraph I. Elections by ballot; registration of voters.—Elections by the people shall be by ballot, and only those persons shall be allowed to vote who have been first registered in accordance with the requirements of law.

2-702. Paragraph II. Who shall be an elector entitled to register and vote.—Every citizen of this State who is a citizen of the United States, eighteen years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: Provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State.

2-703. Paragraph III. Who entitled to register and vote.—To entitle a person to register and vote at any election by the people, he shall have resided in the State one year preceding the election, and in the county in which he offers to vote six months next preceding the election.

2-704. Paragraph IV. Qualifications of electors.—Every citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not [fol. 17] disqualified under the provisions of Section II of Article II of this Constitution, and who possesses the qualifications prescribed in Paragraphs II and III of this Section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the two following subdivisions of this paragraph.

1. All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or

2. All persons who can correctly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State that may be read to them by any one of the registrars. (Georgia Code Annotated, Sections 2-701 through 2-704, Article II, Section 1, Paragraphs I-IV, Constitution of the State of Georgia.)

[fol. 18]

EXHIBIT B TO COMPLAINT

34-3212. County unit vote.—Whenever any political party shall hold primary elections for nomination of candidates for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court, and Judges of the Court of Appeals, such party or its authorities shall cause all candi-

dates for nominations for said offices to be voted for on one and the same day throughout the State, which is hereby fixed as the second Wednesday in September of each year in which there is a regular general election. Candidates for nominations to the above-named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. If in any county any two or more candidates shall tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively who shall receive a majority of all the county unit votes, throughout the entire state, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominees of such party for the above-named offices, respectively, and it shall be the duty of the State executive committee elected [fol. 19] or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all of the county unit votes throughout the State, that said candidates have received an equal number of county

unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party.

34-3213. Second primary election.—In the event that, after such consolidation of all the county unit votes throughout the State, it shall be made to appear that in the contest for any one or more of said offices, no candidate has received a majority of all of the county unit votes throughout the [fol. 20] State, upon the basis as above set forth, and it shall further appear that there are more than two candidates for any one or more of said offices, such political party shall hold a second primary election throughout the State on the first Wednesday in October following such first primary election; and in such second primary election only the two candidates ascertained to have received the highest number of county unit votes at the first primary election for any particular office shall be voted for; and the vote shall be consolidated and the result declared and certified within 10 days after said second primary election, and published in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hand and seal of said chairman or secretary; and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party hold-

ing such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held to be the duly nominated candidates of such party for the offices named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all of the county unit votes of all the counties, said State convention or the permanent chairman thereof, or the secretary [fol. 21] thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party: Provided, further, that said second primary election shall not affect the nomination of any candidate or candidates for any one of said offices who shall have received a majority of the county unit votes at the first primary election, and said second primary election shall be held only for the purpose of deciding contests for offices in which no candidate shall have received a majority of the county unit votes at the first primary election: Provided, further, that in the event there shall be more than two candidates in the first primary and any two candidates shall tie in said first primary for the next or second highest number of county unit votes received, the candidate who shall receive the highest number of popular votes in said first primary, as between said two candidates so tying, shall make the contest in said second primary, against the candidate who shall have received in said first primary the highest number of county unit votes; and in the event any three or more candidates shall tie in

said first primary for the highest number of county unit votes, the two candidates (among said candidates so tying for the highest number of county unit votes) who shall have received the highest number of popular votes in said first primary, shall make the contest against each other in said second primary; Provided, further, that all of the provisions of this section relative to a second primary, in the event no candidate shall receive a majority of all of the county unit votes throughout the State in the first primary, shall apply only to the offices of the United States Senator, [fol. 22] and Governor; and no second primary shall be necessary to decide finally the contest for any other office named in section 34-3212; and in the contest for all of said offices, except United States Senator and Governor, the candidates for such offices who shall receive the highest number of county unit votes, throughout the State, upon the basis above set forth, shall in like manner be declared the nominees of such party for said offices, respectively; Provided, further, that in the event, after such consolidation, it shall be made to appear that any two or more candidates for the same office (except in contests for United States Senator and Governor) shall have received an equal number of county unit votes, the candidate or candidates who shall receive the highest number of popular votes throughout the State, shall, in like manner, be declared the nominee or nominees of such party for said offices, respectively; it being the intention of this proviso to provide that the majority of the county unit vote shall be the determining factor for the nomination of United States Senator and Governor and that the plurality of the county unit vote shall be the determining factor for the nomination to all other offices named in section 34-3212.

34-3214. Convention, when held.—In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election.

34-3215. Special primary elections to fill vacancies.—Special primary elections to fill vacancies in any of the

offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes throughout the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary elections: Provided, that if no convention of such party shall be called or held, to follow a special primary election the declaration of the result shall be made in such manner as may be prescribed by the State Committee or other authority of such party.

34-3216. Expenses; payment.—The expense of holding such primary elections shall be paid by the political party which causes the same to be held.

34-3217. Limitations.—Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last-named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals.

34-3218. Laws of force.—All the laws in reference to the [fol. 24] qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who

is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election.

(Georgia Code Annotated, Sections 34-3212 through 34-3218; Acts 1917, pp. 183, 184; Acts of 1949, p. 967, Acts of 1950, pp. 79, 80)

[fol. 25]

EXHIBIT C TO COMPLAINT

40-601 (7). Election blanks. Deciding conflicting claims to have names placed on ballot.—The Secretary of State shall furnish each ordinary of the State the form of official ballot, all blank forms, including tally sheets, blank lists of voters, forms of returns, certificates and directions to be used in all elections for United States Senate, Governor, electors of President and Vice President of the United States, representatives to Congress, Secretary of State, State Treasurer, Comptroller General, Attorney General, State Superintendent of Schools, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior court, solicitor general, Public Service Commissioner, Commissioner of Labor, members of the General Assembly, and county officers. The Secretary of State shall certify to the respective ordinaries the names of all candidates for national and state offices who have qualified as such as provided in section 34-1904 and in case there are one or more persons purporting to represent the same political party or candidate it shall be the duty of the Secretary of State to determine such an issue. The ordinaries of the respective counties shall not be required to add any other names for national and state offices on the official ballot except upon certificate of the Secretary of State. (Georgia Code Annotated, Section 40-601(7), taken from Georgia Laws 1946, p. 75.)

[fol. 26]

EXHIBIT D TO COMPLAINT

34-1904. Ballots in elections other than primary elections.—In all elections other than primary elections held under the auspices of a political party, it shall be the duty of the ordinary to provide and furnish at the expense of the county, and in case of purely municipal elections, at the expense of the municipality, official ballots for all such elections, having printed thereon, in separate columns, the names of the candidates of each political party, designating the names of the political party to which they belong, and also the names of any other candidates for the offices to be filled at said election; and in case of election for President or Vice President of the United States, the names of the candidates for such offices may be added with the electors and party designation; Provided, however, that it shall not be the duty of said officers to place the names of any candidates on said official ballots, unless notice of their candidacy shall be given in the following manner, to wit: All candidates for national and State offices, or the proper authorities of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least 30 days prior to the regular election, except in cases where a second primary election is necessary; Provided, further, that such candidate shall also file a petition for that purpose signed [fol. 27] by not less than five per cent of the registered voters in that territory or that such political party shall have cast no less than five per cent of the votes in the last general election next preceding for the election of such officer; but nothing in this proviso shall be construed as applying to special elections. The names of such candidates shall be filed with the Secretary of State as soon as possible after the determination of the result of said second primary. All candidates for district and county offices, either by themselves or by the proper authorities of the party nominating them, shall file notice of their candidacy with the ordinary of the county at least 15 days before the regular election, and all candidates for

municipal offices shall file notice of their candidacy, either by themselves or by the proper authorities of the party nominating them, with the mayor or other chief executive officer of the municipality at least 15 days before the regular election. In the event of the resignation or death of any nominee of any political party prior to the regular election, at which the name of said nominee is to appear on the official ballot, said vacancy in nomination shall be filled in such manner as may be determined by the proper authorities of such party. Said officers shall also have printed on said ballots such language as may be necessary for the voters to express their desires as to any question or matter which may be submitted at any such election. In all other particulars such ballots shall be [fol. 28] arranged, printed, and prepared for regular elections as provided in section 34-1903: Provided, further, however, that at any general election at which electors of President and Vice President of the United States are to be elected, there shall be printed on the official ballot, in a separate column, the names of all candidates for State, national, and other offices to be filled at said election, except candidates for President and Vice President and electors of President and Vice President, who have qualified as hereinabove by this section required, under the official name of the political party nominating such candidates, which official name shall be printed directly above such separate column; and there shall also be printed on said official ballot, in separate column, the names of all candidates for electors of President and Vice President of the United States notice of whose candidacy has been filed with the Secretary of State by the proper authorities of the political party nominating them 20 days before such general election, together with the names of the candidates for President and Vice President nominated by the political party nominating such candidates for electors, each such list of nominees for electors and for President and Vice President to be printed in a separate column under the official name of the political party nominating them, which official name shall be printed directly above each such separate column: Provided, further, that the requirements of this section as [fol. 29] to the percentage of votes cast in the last general

election and as to a petition signed by five per cent of the voters shall not apply to candidates for electors of President and Vice President of the United States, but no person shall be entitled to have his name entered on the ballot as a candidate for such elector except as the nominee of a political party which has nominated candidates for President and Vice President; Provided, further, that any political party or candidate desiring to have a name or names placed upon the general election ballot and subject to the requirements of this section as to the percentage of votes cast in the last general election and as to a petition signed by five per cent of the voters, shall accompany said petition with a sworn statement to the effect that each of the names appearing in said petition were duly qualified and registered voters at the last general election: Provided, further, that the party authorities certifying the names of candidates for electors of President and Vice President shall accompany such certification with an affidavit signed by each candidate for elector, stating that such candidate is not now and never has been a member of the Communist Party, and does not believe in or sympathize with the principles of such Communist Party.

The provisions of this section shall become operative and effective uniformly throughout the State immediately upon its passage and approval, and do not require the approval or recommendation of any grand jury. [fol. 30] The provisions of this section shall apply to all certifications of candidacy and petitions which may be on file with the Secretary of State at the time of the approval of this section, as well as to all certifications of candidacy and petitions filed with the Secretary of State subsequent to the time of approval of this section.

If any part of this section is declared unconstitutional it is the legislative intent that the remaining portions of the law remain effective. (Georgia Code, Annotated, Supplement, Section 34-1904, taken from Georgia Laws 1922, p. 100, as amended in Georgia Laws 1943, p. 292.)

EXHIBIT F *to ... plaint*

RELATIVE ELECTORAL INFLUENCE OF INDIVIDUAL CITIZENS OF EACH COUNTY 1920 THROUGH 1960

| <i>County Unit Votes</i> | | | | | | | | | | | | | | |
|--------------------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|----------------------------|------------------|-------------------|
| Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes |
| 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | | |
| APPLING: | | | | | | | | | | | | | | |
| 2 10,594 | 7.3 | 2 | 13,314 | 8.0 | 2 | 14,497 | 9.0 | 2 | 14,003 | 11.3 | 2 | 13,098 ²⁴⁶ | 14.1 | |
| ATKINSON: | | | | | | | | | | | | | | |
| 2 7,656 | 10.1 | 2 | 6,894 | 15.4 | 2 | 7,093 | 18.5 | 2 | 7,312 | 21.4 | 2 | 6,188 ¹⁸⁸ | 29.9 | |
| BACON: | | | | | | | | | | | | | | |
| 2 5,460 | 12.0 | 2 | 7,055 | 15.1 | 2 | 8,056 | 16.2 | 2 | 8,940 | 17.7 | 2 | 8,359 ³⁵⁹ | 22.2 | |
| BAKER: | | | | | | | | | | | | | | |
| 2 8,298 | 9.3 | 2 | 7,818 | 13.6 | 2 | 8,344 | 17.6 | 2 | 8,952 | 20.5 | 2 | 4,528 ⁵²⁸ | 40.7 | |
| BALDWIN: | | | | | | | | | | | | | | |
| 2 19,791 | 3.9 | 4 | 22,878 | 9.3 | 4 | 24,150 | 10.5 | 4 | 25,706 | 10.8 | 4 | 34,254 ⁰⁶⁴ | 10.8 | |
| BANKS: | | | | | | | | | | | | | | |
| 2 11,814 | 6.6 | 2 | 9,703 | 11.0 | 2 | 9,733 | 15.0 | 2 | 8,935 | 22.8 | 2 | 8,467 ⁴⁹⁷ | 28.5 | |
| BARROW: | | | | | | | | | | | | | | |
| 2 13,188 | 5.9 | 2 | 12,401 | 9.6 | 2 | 13,004 | 10.0 | 2 | 13,110 | 12.0 | 2 | 15,714 ^{14,485} | 12.2 | |
| BARTOW: | | | | | | | | | | | | | | |
| 4 24,527 | 5.0 | 4 | 25,364 | 8.4 | 4 | 25,283 | 10.4 | 4 | 27,370 | 11.5 | 4 | 27,987 ^{28,267} | 13.2 | |
| BEN HILL: | | | | | | | | | | | | | | |
| 2 14,599 | 5.3 | 2 | 13,047 | 8.1 | 2 | 14,223 | 9.0 | 2 | 14,679 | 10.1 | 2 | 13,585 ⁶³³ | 13.6 | |
| BERRIEN: | | | | | | | | | | | | | | |
| 2 15,573 | 5.0 | 2 | 14,646 | 7.4 | 2 | 15,370 | 8.5 | 2 | 13,906 | 11.3 | 2 | 12,937 ^{12,038} | 15.4 | |
| BIBB: | | | | | | | | | | | | | | |
| 6 71,304 | 3.3 | 6 | 77,042 | 4.1 | 6 | 83,783 | 4.7 | 6 | 114,079 | 4.2 | 6 | 139,964 ^{141,249} | 4.0 | |
| BLECKLEY: | | | | | | | | | | | | | | |
| 2 10,532 | 7.4 | 2 | 9,133 | 11.7 | 2 | 9,655 | 13.6 | 2 | 9,218 | 17.1 | 2 | 9,000 ⁴² | 19.2 | |
| BRANTLEY: | | | | | | | | | | | | | | |
| 2 (1) | | 2 | 6,395 | 15.4 | 2 | 6,371 | 19.0 | 2 | 6,357 | 25.7 | | 6,842 ⁹¹ | 31.6 | |
| BROOKS: | | | | | | | | | | | | | | |
| 4 24,538 | 6.3 | 4 | 21,330 | 10.0 | 2 | 20,357 | 16.4 | 2 | 18,169 | 18.7 | | 15,230 ^{15,292} | 12.1 | |
| BRYAN: | | | | | | | | | | | | | | |
| 2 6,343 | 12.2 | 2 | 5,952 | 17.9 | 2 | 6,288 | 20.8 | 2 | 5,965 | 20.5 | | 11,214 ^{6,226} | 24.7 | |
| BULLOCH: | | | | | | | | | | | | | | |
| 4 26,133 | 5.9 | 4 | 26,509 | 3.0 | 4 | 26,010 | 10.1 | 4 | 24,740 | 12.8 | 4 | 24,299 ²⁶³ | 15.2 | |

(Vol. 31)
EXHIBIT "F" TO COMPLAINT

F
EXHIBIT 1 (Cont'd)

| County Unit Votes | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-------------------|---------|------|------------------|---------|-------------------|---|---------|------------|---|---------|------------------|---|-------------------|------|------|------------|--|--|------------------|------|-------------------|--|--|------------|--|--|------------------|--|
| Population | | | Disparity Factor | | County Unit Votes | | | Population | | | Disparity Factor | | County Unit Votes | | | Population | | | Disparity Factor | | County Unit Votes | | | Population | | | Disparity Factor | |
| 1920 | | | | | 1930 | | | | | 1940 | | | | | 1950 | | | | | 1960 | | | | | | | | |
| BURKE: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | 30,836 | 5.0 | 4 | 29,224 | 7.3 | 4 | 26,520 | 9.9 | 4 | 23,458 | 13.5 | 4 | 20,463 | 18.0 | | | | | | | | | | | | | | |
| BUTTS: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 12,327 | 6.3 | 2 | 9,345 | 11.4 | 2 | 9,182 | 14.3 | 2 | 9,079 | 17.4 | 2 | 8,822 | 20.7 | | | | | | | | | | | | | | |
| CALHOUN: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 10,225 | 7.6 | 2 | 10,576 | 10.0 | 2 | 10,438 | 12.6 | 2 | 8,578 | 18.4 | 2 | 7,341 | 25.3 | | | | | | | | | | | | | | |
| CAMDEN: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 6,969 | 11.1 | 2 | 6,338 | 16.8 | 2 | 5,910 | 22.2 | 2 | 7,322 | 21.6 | 2 | 9,975 | 18.6 | | | | | | | | | | | | | | |
| CANDLER: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 9,228 | 8.4 | 2 | 8,991 | 11.8 | 2 | 9,103 | 14.4 | 2 | 8,063 | 19.6 | 2 | 6,656 | 27.7 | | | | | | | | | | | | | | |
| CARROLL: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | 34,752 | 4.5 | 4 | 34,272 | 6.2 | 4 | 34,156 | 7.3 | 4 | 34,112 | 9.3 | 4 | 36,329 | 10.2 | | | | | | | | | | | | | | |
| CATOOSA: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 6,677 | 11.6 | 2 | 9,421 | 11.3 | 2 | 12,199 | 10.7 | 2 | 15,146 | 10.4 | 2 | 21,101 | 8.8 | | | | | | | | | | | | | | |
| CHARLTON: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 4,536 | 17.1 | 2 | 4,381 | 24.2 | 2 | 5,256 | 25.0 | 2 | 4,821 | 32.7 | 2 | 5,295 | 34.8 | | | | | | | | | | | | | | |
| CHATHAM: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | 100,032 | 2.3 | 6 | 105,431 | 3.0 | 6 | 117,970 | 3.3 | 6 | 151,481 | 3.1 | 6 | 188,299 | 3.0 | | | | | | | | | | | | | | |
| CHATTAHOOCHEE: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 5,266 | 14.7 | 2 | 3,894 | 11.9 | 2 | 15,138 | 8.7 | 2 | 12,149 | 13.0 | 2 | 13,101 | 14.1 | | | | | | | | | | | | | | |
| CHATTOOGA: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 14,312 | 5.4 | 2 | 15,547 | 6.3 | 2 | 18,532 | 7.1 | 4 | 21,197 | 14.9 | 4 | 19,352 | 18.6 | | | | | | | | | | | | | | |
| CHEROKEE: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 18,569 | 4.2 | 2 | 20,003 | 5.3 | 2 | 20,126 | 6.5 | 2 | 20,750 | 7.5 | 2 | 22,910 | 8.0 | | | | | | | | | | | | | | |
| CLARKE: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | 26,111 | 5.9 | 4 | 25,13 | 8.3 | 4 | 23,398 | 9.2 | 4 | 36,550 | 8.6 | 4 | 45,064 | 8.2 | | | | | | | | | | | | | | |
| CLAY: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 7,557 | 10.3 | 2 | 6,543 | 15.3 | 2 | 7,064 | 17.7 | 2 | 5,344 | 27.0 | 2 | 4,523 | 40.8 | | | | | | | | | | | | | | |
| CLAYTON: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 11,159 | 7.0 | 2 | 10,260 | 10.4 | 2 | 11,655 | 11.2 | 4 | 22,872 | 13.8 | 4 | 45,575 | 8.0 | | | | | | | | | | | | | | |
| CLINCH: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 7,984 | 9.7 | 2 | 7,015 | 15.1 | 2 | 6,437 | 20.3 | 2 | 6,007 | 26.3 | 2 | 6,521 | 28.3 | | | | | | | | | | | | | | |
| COBB: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | 30,437 | 5.1 | 4 | 35,408 | 6.0 | 4 | 38,272 | 6.8 | 6 | 61,830 | 7.7 | 6 | 113,000 | 4.9 | | | | | | | | | | | | | | |
| COFFEE: | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2 | 18,653 | 4.2 | 2 | 19,739 | 5.4 | 4 | 21,541 | 12.2 | 4 | 23,961 | 13.2 | 4 | 21,696 | 17.0 | | | | | | | | | | | | | | |

[fol. 32]

F
EXHIBIT 8 (Cont'd)

| County Unit Votes Population Disparity Factor | County Unit Votes Population Disparity Factor | County Unit Votes Population Disparity Factor | County Unit Votes Population Disparity Factor | County Unit Votes Population Disparity Factor |
|---|---|---|---|---|
| 1920 | 1930 | 1940 | 1950 | 1960 |
| COLQUITT: 4 29,332 5.3 | 4 30,622 6.9 | 4 33,012 7.9 | 4 33,999 9.3 | 4 34,048 33,931 10.9 |
| COLUMBIA: 2 11,718 6.6 | 2 8,793 12.1 | 2 9,433 13.9 | 2 9,525 16.6 | 2 423 13,108 13.9 |
| COOK: 2 11,180 6.9 | 2 11,311 9.4 | 2 11,919 11.0 | 2 12,201 12.9 | 2 822 11,180 15.7 |
| COWETA: 4 29,047 5.3 | 4 25,127 8.5 | 4 26,972 9.7 | 4 27,786 11.4 | 4 893 28,110 12.8 |
| CRAWFORD: 2 8,893 8.7 | 2 7,020 15.1 | 2 7,128 18.4 | 2 6,030 26.0 | 2 816 5,186 31.8 |
| CRISP: 2 18,914 4.1 | 2 17,343 6.1 | 2 17,540 7.5 | 2 17,663 8.9 | 2 768 17,112 10.5 |
| DADE: 2 3,918 19.8 | 2 4,146 25.6 | 2 5,894 22.2 | 2 7,364 21.4 | 2 666 8,784 21.5 |
| DAWSON: 2 4,204 18.4 | 2 3,502 30.4 | 2 4,479 29.2 | 2 3,712 42.5 | 2 590 3,881 51.7 |
| DECATUR: 4 31,785 4.9 | 4 23,622 9.0 | 4 22,234 11.8 | 4 23,620 13.4 | 4 203 25,121 14.7 |
| DEKALB: 6 44,051 5.3 | 6 70,278 4.5 | 6 86,942 4.5 | 6 136,395 3.5 | 6 256,782 254,862 2.2 |
| DODGE: 4 22,540 6.9 | 4 21,599 9.9 | 2 21,022 6.2 | 2 17,865 8.8 | 2 483 16,188 11.2 |
| DOOLEY: 2 20,522 3.8 | 2 18,025 5.9 | 2 16,886 7.8 | 2 14,159 11.1 | 2 474 11,181 16.2 |
| DOUGHERTY: 2 20,063 3.9 | 4 22,306 9.5 | 4 28,565 9.2 | 4 43,617 7.2 | 4 75,680 24,787 4.9 |
| DOUGLAS: 2 10,477 7.4 | 2 9,461 11.2 | 2 10,053 13.0 | 2 12,173 13.0 | 2 741 16,572 11.1 |
| EARLY: 2 18,983 4.1 | 2 18,273 5.8 | 2 18,679 7.0 | 2 17,413 9.1 | 2 151 13,059 14.1 |
| ECHOLS: 2 3,313 23.4 | 2 2,744 38.7 | 2 2,964 44.2 | 2 2,494 63.3 | 2 6 1,874 98.4 |
| EFFINGHAM: 2 9,985 7.8 | 2 10,164 10.5 | 2 9,646 13.6 | 2 9,133 17.3 | 2 144 10,181 18.2 |
| ELBERT: 4 23,905 6.5 | 2 18,485 5.8 | 2 19,618 6.7 | 2 18,585 8.5 | 2 815 17,799 10.4 |

[Col. 33]

EXHIBIT ~~X~~ (Cont'd)

| <i>County Unit Votes</i> | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor |
|--------------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|------------------------------|------------|------------------|
| 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | | |
| EMANUEL: | | | | | | | | | | | | | | |
| 4 25,862 6.0 | | | 4 24,101 8.8 | | | 4 23,517 11.1 | | | 2 19,789 8.0 | | | 2 17,815 777 10.4 | | |
| EVANS: | | | | | | | | | | | | | | |
| 2 6,594 11.8 | | | 2 7,102 15.0 | | | 2 7,401 17.7 | | | 2 6,653 23.7 | | | 2 6,952 944 26.6 | | |
| FANNIN: | | | | | | | | | | | | | | |
| 2 12,103 6.4 | | | 2 12,969 8.2 | | | 2 14,752 8.9 | | | 2 15,192 10.4 | | | 2 13,620 777 13.5 | | |
| PAYETTE: | | | | | | | | | | | | | | |
| 2 11,396 6.8 | | | 2 8,665 12.2 | | | 2 8,170 16.0 | | | 2 7,978 19.8 | | | 2 8,199 777 22.6 | | |
| FLOYD: | | | | | | | | | | | | | | |
| 6 39,841 5.8 | | | 6 48,667 6.5 | | | 6 56,141 7.0 | | | 6 62,899 7.5 | | | 6 69,130 777 7.7 | | |
| FORSYTH: | | | | | | | | | | | | | | |
| 2 11,755 6.6 | | | 2 10,624 10.0 | | | 2 11,322 11.6 | | | 2 11,005 14.3 | | | 2 12,170 777 15.2 | | |
| FRANKLIN: | | | | | | | | | | | | | | |
| 2 19,957 3.9 | | | 2 15,902 6.7 | | | 2 15,512 8.4 | | | 2 14,446 10.9 | | | 2 13,274 777 14.0 | | |
| FULTON: | | | | | | | | | | | | | | |
| 6 232,606 1.0 | | | 6 318,587 1.0 | | | 6 392,886 1.0 | | | 6 473,572 1.0 | | | 6 556,326 777 1.0 | | |
| GILMER: | | | | | | | | | | | | | | |
| 2 8,406 9.2 | | | 2 7,344 14.5 | | | 2 9,001 14.6 | | | 2 9,963 15.8 | | | 2 8,922 777 20.8 | | |
| GLASCOCK: | | | | | | | | | | | | | | |
| 2 4,192 18.5 | | | 2 4,388 24.2 | | | 2 4,547 28.8 | | | 2 3,579 44.1 | | | 2 2,672 777 69.3 | | |
| GLYNN: | | | | | | | | | | | | | | |
| 2 19,370 4.0 | | | 2 19,400 5.5 | | | 4 21,920 10.9 | | | 4 29,046 10.9 | | | 4 41,954 777 8.8 | | |
| GORDON: | | | | | | | | | | | | | | |
| 2 17,736 4.4 | | | 2 16,846 6.3 | | | 2 18,445 7.1 | | | 2 18,922 8.3 | | | 2 19,228 777 9.7 | | |
| GRADY: | | | | | | | | | | | | | | |
| 2 20,306 3.8 | | | 2 19,200 5.5 | | | 2 19,654 6.7 | | | 2 18,928 8.3 | | | 2 18,015 777 10.3 | | |
| GREENE: | | | | | | | | | | | | | | |
| 2 18,972 4.1 | | | 2 12,616 8.4 | | | 2 13,709 9.6 | | | 2 12,843 12.3 | | | 2 11,193 777 16.6 | | |
| GWINNETT: | | | | | | | | | | | | | | |
| 4 30,327 5.1 | | | 4 27,853 7.6 | | | 4 29,087 9.0 | | | 4 32,320 9.8 | | | 4 43,541 777 8.5 | | |
| HABERSHAM: | | | | | | | | | | | | | | |
| 2 10,730 7.2 | | | 2 12,748 8.3 | | | 2 14,771 8.9 | | | 2 16,553 9.5 | | | 2 18,116 777 10.2 | | |
| HALL: | | | | | | | | | | | | | | |
| 4 26,822 5.8 | | | 4 30,313 7.0 | | | 4 34,822 7.5 | | | 4 40,113 7.9 | | | 4 49,739 777 7.5 | | |
| HANCOCK: | | | | | | | | | | | | | | |
| 2 18,357 4.2 | | | 2 13,070 8.1 | | | 2 12,764 10.3 | | | 2 11,052 14.3 | | | 2 9,979 777 18.6 | | |

EXHIBIT ^F₉ (Cont'd)

| <i>County Unit Votes</i> | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor |
|--------------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|
| | 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | |
| HARALSON: | | | | | | | | | | | | | 543 | |
| 2 | 14,440 | 5.4 | 2 | 13,263 | 8.0 | 2 | 14,377 | 9.1 | 2 | 14,663 | 10.8 | 2 | 14,467 | 12.8 |
| HARRIS: | | | | | | | | | | | | | 167 | |
| 2 | 15,575 | 5.0 | 2 | 11,140 | 9.5 | 2 | 11,428 | 11.5 | 2 | 11,265 | 14.0 | 2 | 11,777 | 16.6 |
| HART: | | | | | | | | | | | | | 229 | |
| 2 | 17,944 | 4.3 | 2 | 15,174 | 7.0 | 2 | 15,512 | 8.4 | 2 | 14,495 | 10.9 | 2 | 15,728 | 12.2 |
| HEARD: | | | | | | | | | | | | | 333 | |
| 2 | 11,126 | 7.0 | 2 | 9,102 | 11.7 | 2 | 8,610 | 15.2 | 2 | 6,975 | 22.6 | 2 | 5,377 | 34.7 |
| HENRY: | | | | | | | | | | | | | 619 | |
| 2 | 20,420 | 3.8 | 2 | 15,924 | 6.7 | 2 | 15,1 | 8.7 | 2 | 15,857 | 10.0 | 2 | 17,437 | 10.6 |
| HOUSTON: | | | | | | | | | | | | | 39,154 | |
| 2 | 21,964 | 3.5 | 2 | 11,280 | 9.4 | 2 | 11,303 | 11.6 | 2 | 20,964 | 7.5 | 2 | 30,953 | 4.7 |
| IRWIN: | | | | | | | | | | | | | 211 | |
| 2 | 12,670 | 6.1 | 2 | 12,199 | 8.7 | 2 | 12,936 | 10.1 | 2 | 11,973 | 13.2 | 2 | 9,764 | 20.1 |
| JACKSON: | | | | | | | | | | | | | 499 | |
| 4 | 24,654 | 6.3 | 4 | 21,609 | 9.9 | 2 | 20,089 | 6.7 | 2 | 13,997 | 8.3 | 2 | 18,470 | 10.0 |
| JASPER: | | | | | | | | | | | | | 135 | |
| 2 | 16,362 | 4.7 | 2 | 8,594 | 12.4 | 2 | 8,772 | 14.9 | 2 | 7,473 | 21.1 | 2 | 6,977 | 30.6 |
| JEFF DAVIS: | | | | | | | | | | | | | 914 | |
| 2 | 7,322 | 10.6 | 2 | 8,118 | 13.1 | 2 | 8,841 | 14.8 | 2 | 9,299 | 17.0 | 2 | 8,879 | 20.8 |
| JEFFERSON: | | | | | | | | | | | | | 468 | |
| 4 | 22,602 | 6.9 | 2 | 20,727 | 5.1 | 2 | 20,040 | 6.5 | 2 | 18,855 | 8.4 | 2 | 17,389 | 10.6 |
| JENKINS: | | | | | | | | | | | | | 148 | |
| 2 | 14,328 | 5.4 | 2 | 12,908 | 8.2 | 2 | 11,843 | 11.1 | 2 | 10,264 | 15.4 | 2 | 9,096 | 20.3 |
| JOHNSON: | | | | | | | | | | | | | 8,048 | |
| 2 | 13,546 | 5.7 | 2 | 12,681 | 8.4 | 2 | 12,953 | 10.1 | 2 | 9,393 | 16.0 | 2 | 7,883 | 23.4 |
| JONES: | | | | | | | | | | | | | 468 | |
| 2 | 13,269 | 5.3 | 2 | 18,592 | 11.3 | 2 | 8,331 | 15.7 | 2 | 7,338 | 20.9 | 2 | 8,177 | 21.9 |
| LAMAR: | | | | | | | | | | | | | 240 | |
| (1) | | | 2 | 9,745 | 10.9 | 2 | 10,091 | 13.0 | 2 | 10,242 | 15.4 | 2 | 10,401 | 18.1 |
| LANIER: | | | | | | | | | | | | | 97 | |
| (1) | | | 2 | 5,190 | 20.4 | 2 | 5,632 | 23.2 | 2 | 5,151 | 30.6 | 2 | 5,032 | 36.4 |
| LAURENS: | | | | | | | | | | | | | 313 | |
| 6 | 39,605 | 5.9 | 4 | 32,693 | 6.5 | 4 | 33,606 | 7.8 | 4 | 33,123 | 9.5 | 4 | 32,787 | 11.5 |
| LEE: | | | | | | | | | | | | | 204 | |
| 2 | 10,904 | 7.1 | 2 | 8,328 | 12.8 | 2 | 7,837 | 16.7 | 2 | 6,674 | 23.7 | 2 | 6,022 | 30.2 |

[fol. 35]

EXHIBIT ^F_X (Cont'd)

[fol. 36]

30

| County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor |
|-------------------|------------|------------------|-------------------|-------------|------------------|-------------------|------------|--------------------------------|-------------------|------------|------------------|-------------------|------------|------------------|
| 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | | |
| LIBERTY: | | | | | | | | | | | | | | |
| 2 12,707 6.1 | 2 | 8,153 13.0 | 2 | 8,595 15.2 | 2 | 8,444 19.7 | 2 | 14,487 ⁷ 12.7 | | | | | | |
| LINCOLN: | | | | | | | | | | | | | | |
| 2 9,739 8.0 | 2 | 7,847 13.5 | 2 | 7,042 18.6 | 2 | 6,462 24.4 | 2 | 5,889 ⁹⁰⁶ 31.5 | | | | | | |
| LONG: | | | | | | | | | | | | | | |
| (1) | 2 | 4,180 25.4 | 2 | 4,086 32.1 | 2 | 3,598 43.9 | 2 | 3,888 ⁷⁴ 47.8 | | | | | | |
| TOWNES: | | | | | | | | | | | | | | |
| 4 26,521 5.9 | 4 | 29,994 7.1 | 4 | 31,860 8.2 | 4 | 35,211 9.0 | 4 | 49,882 ²⁷⁰ 7.5 | | | | | | |
| LUMPKIN: | | | | | | | | | | | | | | |
| 2 5,240 14.8 | 2 | 4,927 21.6 | 2 | 6,223 21.1 | 2 | 6,574 24.0 | 2 | 7,288 ⁴¹ 25.5 | | | | | | |
| MCDUFFIE: | | | | | | | | | | | | | | |
| 2 11,509 6.7 | 2 | 9,014 11.8 | 2 | 10,878 12.0 | 2 | 11,443 13.8 | 2 | 12,888 ⁶²⁷ 14.7 | | | | | | |
| MCINTOSH: | | | | | | | | | | | | | | |
| 2 5,119 15.2 | 2 | 5,763 18.4 | 2 | 5,292 24.8 | 2 | 6,008 26.3 | 2 | 6,398 ⁶⁴ 29.2 | | | | | | |
| MACON: | | | | | | | | | | | | | | |
| 2 17,667 4.4 | 2 | 16,643 6.4 | 2 | 15,947 8.2 | 2 | 14,213 11.1 | 2 | 13,179 ⁷⁰ 14.1 | | | | | | |
| MADISON: | | | | | | | | | | | | | | |
| 2 18,803 4.1 | 2 | 14,921 7.1 | 2 | 13,431 9.8 | 2 | 12,238 12.9 | 2 | 11,888 ²⁴⁶ 16.4 | | | | | | |
| MARION: | | | | | | | | | | | | | | |
| 2 7,604 10.2 | 2 | 6,968 15.2 | 2 | 6,954 18.8 | 2 | 6,521 24.2 | 2 | 5,888 ⁴⁷⁷ 33.6 | | | | | | |
| MERIWETHER: | | | | | | | | | | | | | | |
| 4 26,168 5.9 | 4 | 22,437 9.5 | 4 | 22,055 11.9 | 4 | 21,055 15.0 | 4 | 19,888 ⁷⁵⁶ 18.8 | | | | | | |
| MILLER: | | | | | | | | | | | | | | |
| 2 9,565 8.1 | 2 | 9,076 11.7 | 2 | 9,98 13.1 | 2 | 9,923 17.5 | 2 | 6,888 ⁹⁰⁸ 21.0 | | | | | | |
| MITCHELL: | | | | | | | | | | | | | | |
| 4 25,588 6.1 | 4 | 23,620 9.0 | 4 | 23,231 11.3 | 4 | 22,828 14.0 | 4 | 19,888 ⁶⁵² 13.8 | | | | | | |
| MONROE: | | | | | | | | | | | | | | |
| 2 20,138 3.8 | 2 | 11,606 9.1 | 2 | 10,749 12.2 | 2 | 10,523 15.0 | 2 | 10,888 ⁴⁹⁵ 17.7 | | | | | | |
| MONTGOMERY: | | | | | | | | | | | | | | |
| 2 9,167 8.5 | 2 | 10,020 10.6 | 2 | 9,668 13.0 | 2 | 7,901 20.0 | 2 | 6,888 ²⁸⁴ 29.1 | | | | | | |
| MORGAN: | | | | | | | | | | | | | | |
| 2 20,143 3.9 | 2 | 12,488 8.5 | 2 | 12,713 10.3 | 2 | 11,899 13.3 | 2 | 10,888 ²⁸⁰ 18.0 | | | | | | |
| MURRAY: | | | | | | | | | | | | | | |
| 2 9,490 8.2 | 2 | 9,215 11.5 | 2 | 11,137 11.8 | 2 | 10,670 14.8 | 2 | 10,888 ⁴⁴⁷ 17.7 | | | | | | |
| MUSCOGEE: | | | | | | | | | | | | | | |
| 6 44,195 5.3 | 6 | 57,558 5.5 | 6 | 75,494 5.2 | 6 | 118,028 4.0 | 6 | 158,623 ^{158,623} 3.5 | | | | | | |

EXHIBIT F (Cont'd)

| County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor |
|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|-------------------|------------|------------------|
| 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | | |
| NEWTON: | | | | | | | | | | | | | | |
| 2 21,680 | 3.6 | | 2 17,290 | 6.1 | | 2 18,576 | 7.1 | | 2 20,135 | 7.8 | | 2 20,999 | 8.8 | |
| O CONEE: | | | | | | | | | | | | | | |
| 2 11,067 | 7.0 | | 2 8,082 | 13.1 | | 2 7,576 | 17.3 | | 2 7,009 | 22.5 | | 2 6,304 | 29.7 | |
| OGLETHORPE: | | | | | | | | | | | | | | |
| 2 20,287 | 3.8 | | 2 12,927 | 8.2 | | 2 12,430 | 10.5 | | 2 9,958 | 15.9 | | 2 7,926 | 23.6 | |
| PAULDING: | | | | | | | | | | | | | | |
| 2 14,025 | 5.5 | | 2 12,327 | 8.6 | | 2 12,832 | 10.2 | | 2 11,752 | 13.4 | | 2 13,101 | 14.1 | |
| PEACH: | | | | | | | | | | | | | | |
| (1) | | | 2 10,268 | 10.4 | | 2 10,378 | 12.6 | | 2 11,705 | 13.5 | | 2 13,846 | 13.4 | |
| PICKENS: | | | | | | | | | | | | | | |
| 2 8,222 | 9.4 | | 2 9,687 | 11.0 | | 2 9,136 | 14.3 | | 2 8,355 | 17.8 | | 2 8,903 | 20.9 | |
| PIERCE: | | | | | | | | | | | | | | |
| 2 11,934 | 6.5 | | 2 12,522 | 8.5 | | 2 11,800 | 11.1 | | 2 11,112 | 14.2 | | 2 9,678 | 19.1 | |
| PIKE: | | | | | | | | | | | | | | |
| 2 21,212 | 3.7 | | 2 10,853 | 9.8 | | 2 10,375 | 12.6 | | 2 8,459 | 18.7 | | 2 7,138 | 25.8 | |
| POLK: | | | | | | | | | | | | | | |
| 2 20,357 | 3.8 | | 4 25,141 | 8.5 | | 4 28,467 | 9.2 | | 4 30,976 | 10.2 | | 4 28,015 | 13.2 | |
| PULASKI: | | | | | | | | | | | | | | |
| 2 11,587 | 6.7 | | 2 9,005 | 11.8 | | 2 9,829 | 14.1 | | 2 8,308 | 17.9 | | 2 8,404 | 22.5 | |
| PUTNAM: | | | | | | | | | | | | | | |
| 2 15,151 | 5.1 | | 2 8,367 | 12.7 | | 2 8,514 | 15.4 | | 2 7,731 | 20.4 | | 2 7,798 | 23.5 | |
| QUITMAN: | | | | | | | | | | | | | | |
| 2 3,417 | 22.7 | | 2 3,120 | 27.8 | | 2 3,335 | 38.1 | | 2 3,015 | 52.3 | | 2 2,332 | 76.1 | |
| RABUN: | | | | | | | | | | | | | | |
| 2 5,746 | 13.5 | | 2 6,331 | 16.8 | | 2 7,021 | 16.7 | | 2 7,424 | 21.3 | | 2 7,456 | 25.0 | |
| RANDOLPH: | | | | | | | | | | | | | | |
| 2 16,721 | 4.6 | | 2 17,174 | 6.2 | | 2 16,609 | 7.9 | | 2 13,804 | 11.4 | | 2 11,078 | 16.7 | |
| RICHMOND: | | | | | | | | | | | | | | |
| 6 63,692 | 3.7 | | 6 72,990 | 4.4 | | 6 81,863 | 4.8 | | 6 108,876 | 4.3 | | 6 135,601 | 4.1 | |
| ROCKDALE: | | | | | | | | | | | | | | |
| 2 9,521 | 8.1 | | 2 7,247 | 14.7 | | 2 7,724 | 16.9 | | 2 8,464 | 18.7 | | 2 10,572 | 17.6 | |
| SCHLEY: | | | | | | | | | | | | | | |
| 2 5,243 | 14.8 | | 2 5,347 | 19.9 | | 2 5,033 | 26.0 | | 2 4,036 | 39.1 | | 2 3,256 | 55.8 | |
| SCREVEN: | | | | | | | | | | | | | | |
| 4 23,552 | 6.6 | | 2 20,503 | 5.2 | | 2 20,353 | 6.0 | | 2 13,000 | 8.8 | | 2 14,919 | 12.4 | |

[Col. 37]

COUNTY UNIT VOTES

| County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor |
|---------------------|------------|------------------|-------------------|-------------|------------------|-------------------|-------------|------------------|-------------------|-------------|------------------|-------------------|-------------------------------|------------------|
| | 1920 | | | 1930 | | | 1940 | | | 1950 | | | 1960 | |
| SEMINOLE: | | | | | | | | | | | | | | |
| 2 (1) | | | 2 | 7,389 14.4 | | 2 | 8,492 15.4 | | 2 | 7,904 20.0 | | 2 | 302 6,788 27.3 | |
| SPALDING: | | | | | | | | | | | | | | |
| 2 21,908 3.5 | | | 4 | 23,495 9.0 | | 4 | 28,427 9.2 | | 4 | 31,045 10.2 | | 4 | 404 35,142 10.3 | |
| STEPHENS: | | | | | | | | | | | | | | |
| 2 11,215 5.9 | | | 2 | 11,740 9.0 | | 2 | 12,972 10.1 | | 2 | 10,647 9.5 | | 2 | 391 13,812 10.1 | |
| STEWART: | | | | | | | | | | | | | | |
| 2 12,089 6.4 | | | 2 | 11,114 9.0 | | 2 | 10,603 12.4 | | 2 | 9,194 17.2 | | 2 | 371 7,818 25.2 | |
| SUMTER: | | | | | | | | | | | | | | |
| 4 29,640 5.2 | | | 4 | 26,800 9.9 | | 4 | 24,502 10.7 | | 4 | 24,208 13.0 | | 4 | 652 24,444 15.1 | |
| TALBOT: | | | | | | | | | | | | | | |
| 2 11,158 7.0 | | | 2 | 8,458 12.6 | | 2 | 8,141 16.1 | | 2 | 7,687 20.5 | | 2 | 127 7,888 20.0 | |
| TALLIAFERRO: | | | | | | | | | | | | | | |
| 2 8,841 8.8 | | | 2 | 6,172 17.2 | | 2 | 5,278 20.9 | | 2 | 4,515 35.0 | | 2 | 370 3,842 55.6 | |
| TATNALL: | | | | | | | | | | | | | | |
| 2 14,502 5.3 | | | 2 | 15,411 6.5 | | 2 | 16,243 8.1 | | 2 | 15,939 9.9 | | 2 | 837 15,812 11.8 | |
| TAYLOR: | | | | | | | | | | | | | | |
| 2 11,473 6.8 | | | 2 | 10,617 10.0 | | 2 | 10,768 12.2 | | 2 | 9,113 17.3 | | 2 | 311 8,877 22.3 | |
| TELFAIR: | | | | | | | | | | | | | | |
| 2 12,291 5.1 | | | 2 | 14,997 7.1 | | 2 | 15,145 8.7 | | 2 | 13,221 11.9 | | 2 | 715 11,586 15.9 | |
| TERRELL: | | | | | | | | | | | | | | |
| 2 19,601 4.0 | | | 2 | 18,290 5.8 | | 2 | 16,075 7.9 | | 2 | 14,314 11.0 | | 2 | 742 12,100 14.6 | |
| THOMAS: | | | | | | | | | | | | | | |
| 4 33,044 4.7 | | | 4 | 32,12 6.5 | | 4 | 31,289 8.4 | | 4 | 33,32 9.3 | | 4 | 319 34,112 10.8 | |
| TIFT: | | | | | | | | | | | | | | |
| 2 14,493 5.4 | | | 2 | 16,68 6.6 | | 2 | 18,99 7.0 | | 4 | 22,45 13.9 | | 4 | 487 23,882 17.9 | |
| TOMBS: | | | | | | | | | | | | | | |
| 2 13,897 5.5 | | | 2 | 17,165 6.2 | | 2 | 16,952 7.7 | | 2 | 17,382 9.1 | | 2 | 837 16,794 11.0 | |
| TOWNS: | | | | | | | | | | | | | | |
| 2 3,937 19.7 | | | 2 | 4,346 24.5 | | 2 | 4,925 26.0 | | 2 | 4,803 32.9 | | 2 | 538 4,484 41.0 | |
| REUTLIEN: | | | | | | | | | | | | | | |
| 2 7,664 10.1 | | | 2 | 7,488 14.2 | | 2 | 7,32 17.2 | | 2 | 5,522 24.2 | | 2 | 874 6,842 31.5 | |
| ROUP: | | | | | | | | | | | | | | |
| 4 36,097 4.3 | | | 6 | 36,752 8.1 | | 6 | 43,849 9.0 | | 4 | 49,841 6.3 | | 4 | 189 47,880 7.6 | |
| TURNER: | | | | | | | | | | | | | | |
| 2 12,466 6.2 | | | 2 | 11,196 5.5 | | 2 | 10,846 12.1 | | 2 | 10,479 15.1 | | 2 | 439 8,788 22.0 | |
| TWIGGS: | | | | | | | | | | | | | | |
| 2 10,407 7.4 | | | 2 | 8,32 12.1 | | 2 | 9,117 14.4 | | 2 | 8,308 19.0 | | 2 | 935 7,812 23.3 | |

EXHIBIT ^F
Q (Cont'd)

| County Unit Votes | 1920 | | 1930 | | 1940 | | 1950 | | 1960 | |
|-------------------|------------|------------------|------------|------------------|------------|------------------|------------|------------------|------------|------------------|
| | Population | Disparity Factor | Population | Disparity Factor | Population | Disparity Factor | Population | Disparity Factor | Population | Disparity Factor |
| UNION: | | | | | | | | | | |
| 2 6,455 12.0 | 2 | 6,340 16.8 | 2 | 7,680 17.1 | 2 | 7,318 21.6 | 2 | 6,492 28.5 | 510 | |
| UPSON: | | | | | | | | | | |
| 2 14,786 5.2 | 2 | 19,509 5.4 | 4 | 25,064 10.4 | 4 | 25,079 12.6 | 4 | 23,122 15.8 | 800 | |
| WALKER: | | | | | | | | | | |
| 4 23,370 3.6 | 4 | 26,206 8.1 | 4 | 31,024 8.4 | 4 | 38,198 8.3 | 4 | 45,264 3.3 | 45,264 | |
| WALTON: | | | | | | | | | | |
| 4 24,216 6.4 | 4 | 21,118 10.1 | 2 | 20,717 6.3 | 2 | 20,230 7.8 | 2 | 20,172 9.1 | 481 | |
| WARE: | | | | | | | | | | |
| 4 28,361 5.5 | 4 | 26,558 8.0 | 4 | 27,929 9.4 | 4 | 30,201 10.4 | 4 | 33,964 10.9 | 34,219 | |
| WARREN: | | | | | | | | | | |
| 2 11,828 3.6 | 2 | 11,181 9.0 | 2 | 10,237 12.8 | 2 | 8,779 18.0 | 2 | 7,380 25.2 | 60 | |
| WASHINGTON: | | | | | | | | | | |
| 4 28,141 5.5 | 4 | 25,030 8.5 | 4 | 24,230 10.8 | 2 | 21,012 7.5 | 2 | 18,177 9.8 | 903 | |
| WAYNE: | | | | | | | | | | |
| 2 14,381 5.4 | 2 | 12,647 8.4 | 2 | 13,122 10.0 | 2 | 14,248 11.1 | 2 | 17,872 10.3 | 921 | |
| WEBSTER: | | | | | | | | | | |
| 2 5,342 14.5 | 2 | 5,032 21.2 | 2 | 4,126 27.8 | 2 | 4,081 38.7 | 2 | 3,247 56.9 | 7 | |
| WHEELER: | | | | | | | | | | |
| 2 9,817 7.9 | 2 | 9,149 11.6 | 2 | 8,535 15.3 | 2 | 6,712 23.5 | 2 | 5,312 34.7 | 42 | |
| WHITE: | | | | | | | | | | |
| 2 6,105 12.7 | 2 | 6,056 17.5 | 2 | 6,417 20.4 | 2 | 5,951 25.5 | 2 | 6,978 26.7 | 35 | |
| WHITFIELD: | | | | | | | | | | |
| 2 16,897 4.5 | 2 | 20,708 5.1 | 4 | 25,055 10.0 | 4 | 34,132 9.2 | 4 | 42,122 5.8 | 09 | |
| WILCOX: | | | | | | | | | | |
| 2 15,511 5.0 | 2 | 13,339 7.9 | 2 | 12,555 10.3 | 2 | 10,157 15.5 | 2 | 8,834 23.5 | | |
| WILKES: | | | | | | | | | | |
| 4 24,210 3.4 | 2 | 15,944 6.6 | 2 | 15,064 9.7 | 2 | 12,520 12.1 | 2 | 10,977 17.0 | 961 | |
| WILKINSON: | | | | | | | | | | |
| 2 11,376 6.3 | 2 | 10,844 9.8 | 2 | 11,025 11.9 | | 9,781 15.1 | | 9,774 20.0 | 250 | |
| WORTH: | | | | | | | | | | |
| 4 23,863 6.5 | 4 | 21,094 10.1 | 4 | 21,374 12.3 | 2 | 19,351 13.2 | 2 | 16,772 11.1 | 682 | |
| CAMPBELL: | | | | | (2) | | (2) | (2) | | |
| 2 11,709 6.6 | 2 | 9,903 10.1 | | | | | | | | |
| MILTON: | | | | | (2) | | (2) | (2) | | |
| 2 6,885 11.3 | 2 | 6,730 15.8 | | | | | | | | |

[Col. 39]

[fol. 40a] Clerk's Certificate to foregoing paper (omitted in printing).

EXHIBIT ^F_E (Cont'd)

| <i>County Unit Votes</i> | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population | Disparity Factor | County Unit Votes | Population |
|---------------------------|------------|------------------|-------------------|------------|------------------|-------------------|--------------|------------------|-------------------|----------------------|------------------|-------------------|------------|
| | 1920 | | 1930 | | | 1940 | | | 1950 | | | | |
| GEORGIA: Minus Fulton) | 6 2663,226 | 5.8 | 408 2589,919 | 8.4 | 404 2730,837 | 9.7 | 404 2971,006 | 10.7 | 404 | 3,386,790 | | | |
| | | | | | | | | | | 3,386,600 | | | |
| GEORGIA: Total) | 2 2895,832 | - | 414 2900,506 | - | 410 3123,723 | - | 410 3444,578 | - | 410 | 3,943,116 | | | |
| | | | | | | | | | | 3,943,116 | | | |

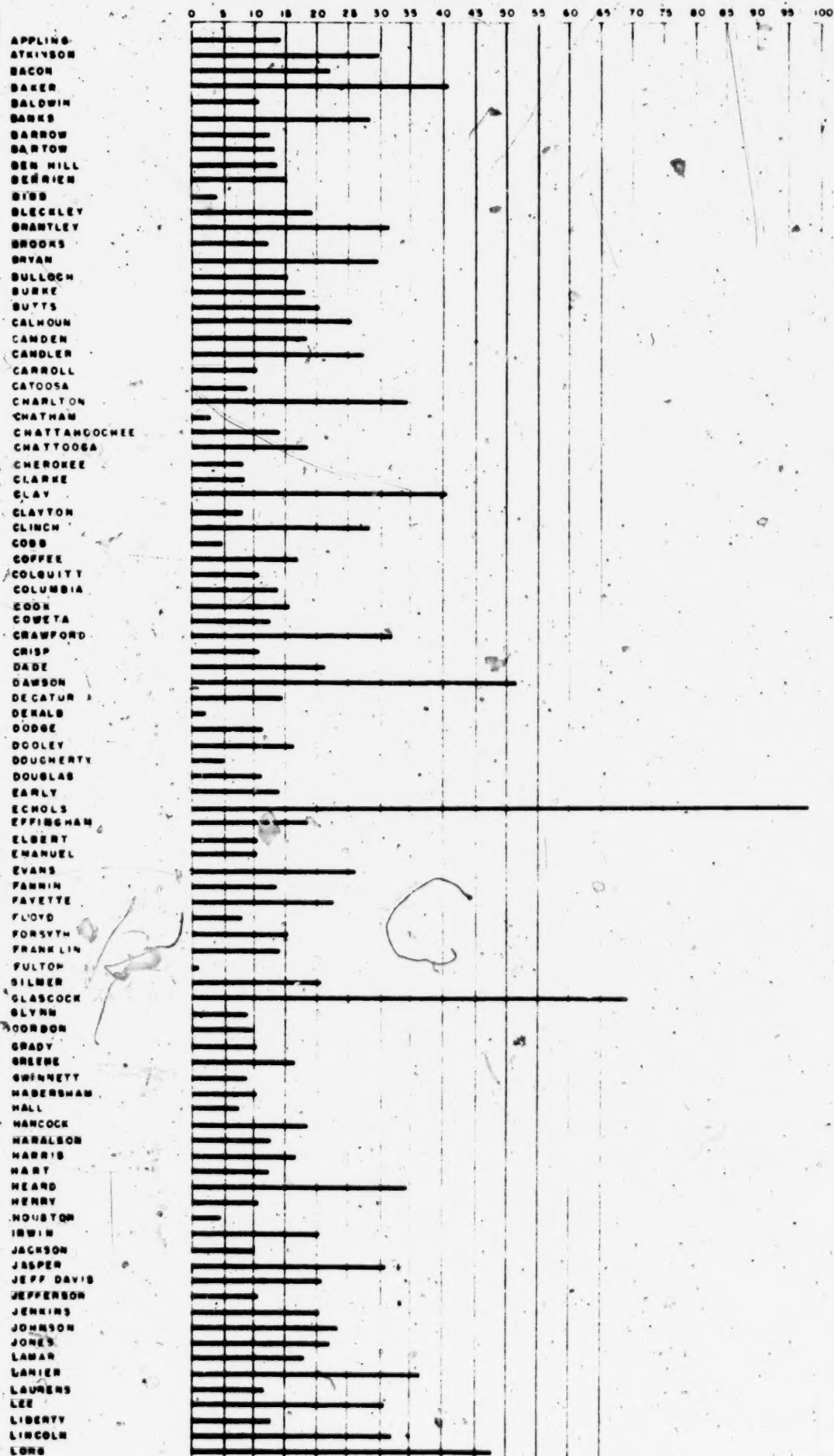
SOURCE:

Calculated from U.S. Census 1920, 1930, 1940, 1950,
1960 preliminary.

FOOTNOTES:

- (1) Counties created since 1920 Census.
- (2) Counties merged with Fulton County after 1930 Census.

RELATIVE ELECTORAL INFLUENCE OF INDIVIDUAL CITIZENS IN EACH OF GEORGIA'S COUNTIES



[fol. 41]

EXHIBIT "G" TO COMPLAINT

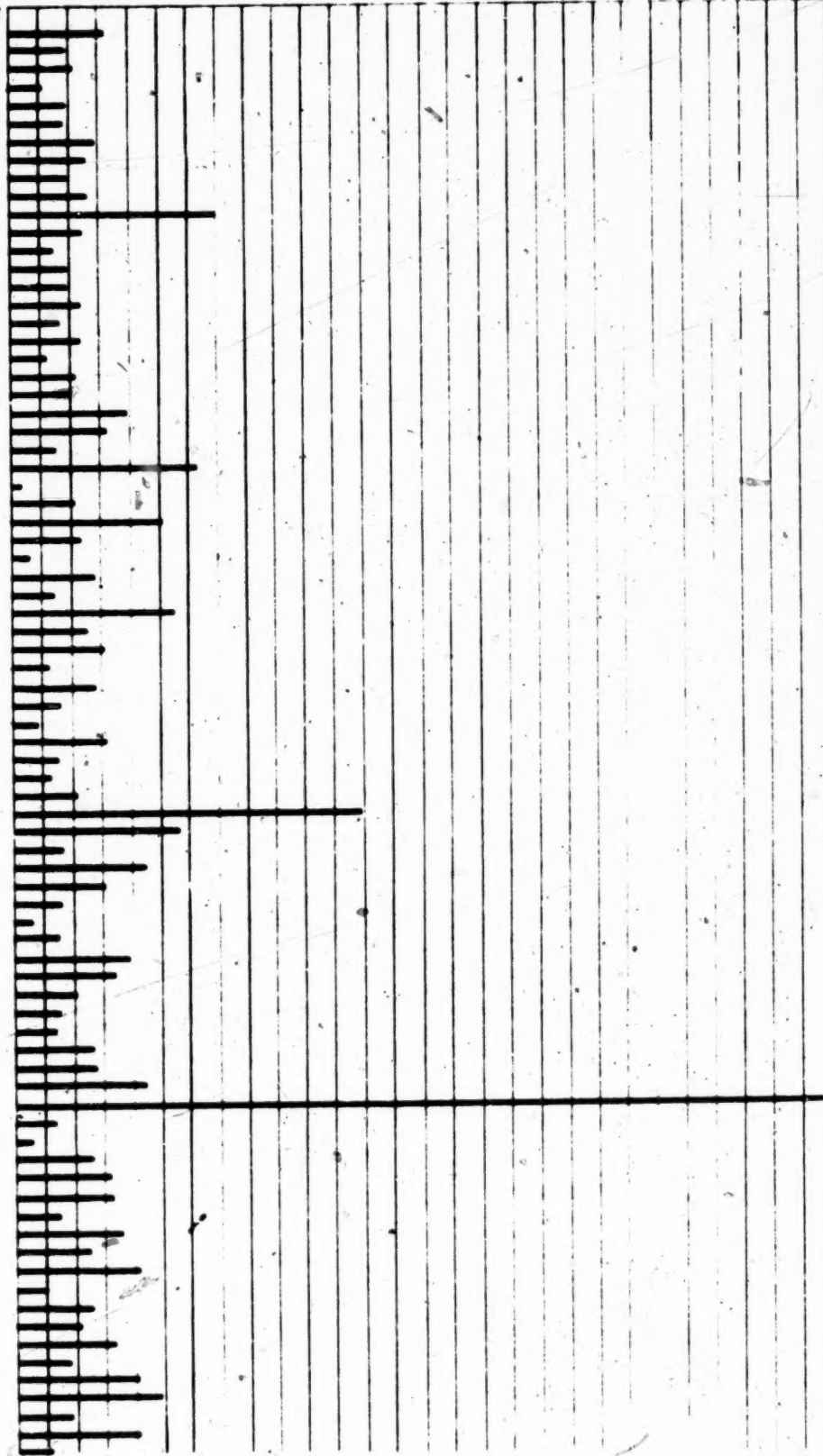
LOWNDES
 LUMPHIN
 MACON
 MADISON
 MARION
 MC DUFFIE
 MC INTOSH
 MERIWETHER
 MILLER
 MITCHELL
 MONROE
 MONTGOMERY
 MORGAN
 MURRAY
 MUSCOGEE
 NEWTON
 O'CONNOR
 OGLETHORPE
 PAULDING
 PEACH
 PICKENS
 PIERCE
 PIKE
 POLK
 PULASKI
 PUTNAM
 QUITMAN
 RABUN
 RANDOLPH
 RICHMOND
 ROCKDALE
 SCHLEY
 SCREVEN
 SEMINOLE
 SPAULDING
 STEPHENS
 STEWART
 SUMTER
 TALBOT
 TALIAFERRO
 TAYNALL
 TAYLOR
 TELFAIR
 TERRELL
 THOMAS
 TIFT
 TOOMBS
 TOWNS
 TRUETT
 TROUP
 TURNER
 TWISS
 UNION
 UPSON
 WALKER
 WALTON
 WARE
 WARREN
 WASHINGTON
 WAYNE
 WEBSTER
 WHEELER
 WHITE
 WHITFIELD
 WILCOX
 WILKES
 WILKINSON
 WORTH



NUMBER OF VOTES CAST REPRESENTED BY ONE COUNTY UNIT VOTE IN DEMOCRATIC PRIMARY ELECTION FOR GOVERNOR IN 1958

THOUSANDS OF VOTES

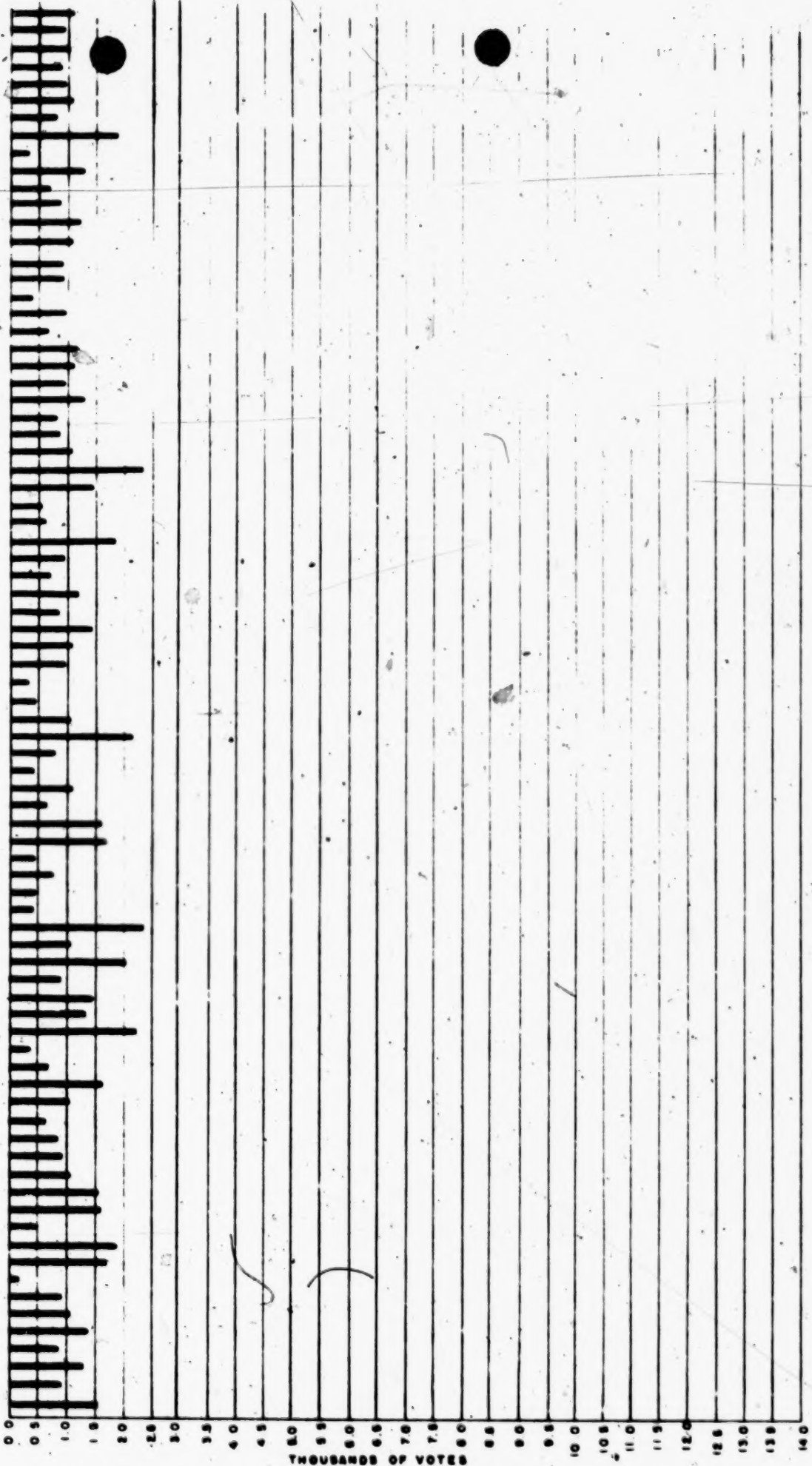
APPLING
ATKINSON
BACON
BAKER
BALDWIN
BAMES
BARROW
BARTON
BEN HILL
BERRIER
BIBB
BLECKLEY
BRANTLEY
BROOKS
BRYAN
BULLOCK
BURKE
BUTTS
CALHOUN
CAMDEN
CANDLER
CARROLL
CATOOSA
CHARLTON
CHATHAM
CHATTANOOCHEE
CHATTOOGA
CHEROKEE
CLARKE
CLAY
CLAYTON
CLINCH
COBB
COFFEE
COLUMBIA
COLUMBIA
COOK
COVINGTON
CRAWFORD
CRISP
DADE
DAWSON
DECATUR
DEKALB
DODGE
DOOLEY
DOUGHERTY
DOUGLAS
EARLY
ECHOLS
EFFINGHAM
ELBERT
EMANUEL
EVANS
FANNIN
FAVETTE
FLOYD
FORSYTH
FRANKLIN
FULTON
GILMER
GLASCOCK
GLYNN
GORDON
GRADY
GREENE
GRINNETT
HABERSHAM
HALL
HARCOCK
HARALSON
HARRIS
HART
HEARD
HERRY
HOUSTON
IRWIN
JACKSON
JACKSON



[fol. 43]

EXHIBITS "H" AND "I" TO COMPLAINT

JEFF DAVIS
 JEFFERSON
 JENNINS
 JOHNSON
 JONES
 LAMAR
 LAMIER
 LAURENS
 LEE
 LIBERTY
 LINCOLN
 LONG
 LOWMEDE
 LUMPEIN
 MACON
 MADISON
 MARION
 MC DUFFIE
 MC INTOSH
 MERIWETHER
 MILLER
 MITCHELL
 MONROE
 MONTGOMERY
 MORGAN
 MURRAY
 MUSCOGEE
 NEWTON
 OCONEE
 OGLEYHORPE
 PAULDING
 PEACH
 PICKENS
 PIERCE
 PINE
 POLK
 PULASKI
 PUTNAM
 QUITMAN
 RABUN
 RANDOLPH
 RICHMOND
 ROCKDALE
 SCHLEY
 SCREVEN
 SEMINOLE
 SPAULDING
 STEPHENS
 STEWART
 SUMTER
 TALBOT
 TALLIAFERRO
 TAYNALL
 TAYLOR
 TELFAIR
 TERRELL
 THOMAS
 TIFT
 TOWNS
 TOWNS
 TRUETT
 TURNER
 TWIGGS
 UNION
 UPSON
 WALKER
 WALTON
 WARE
 WARREN
 WASHINGTON
 WAYNE
 WEBSTER
 WHEELER
 WHITE
 WHITFIELD
 WILCOX
 WILKES
 WILKINSON
 WORTH



[fol. 45]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING FILING OF COMPLAINT—March 26, 1962

Tender of the complaint in the above action is acknowledged. The same is ordered filed this 26th day of March, 1962.

Frank A. Hooper, Judge, U. S. District Court.

[fol. 46]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE-JUDGE COURT—April 2, 1962

The Honorable Frank A. Hooper, United States District Judge for the Northern District of Georgia, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable Griffin B. Bell, United States Circuit Judge, and the undersigned Elbert P. Tuttle, United States Circuit Judge, to serve with Judge Hooper as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 2nd day of April, 1962.

Filed April 2, 1962.

Elbert P. Tuttle, Chief Judge.

[fol. 47] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR ADMISSIONS—Filed April 9, 1962

Plaintiff James O'Hear Sanders requests each of the defendants, within ten (10) days after service of this Request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial. When a question or request has a lettered subsection, it shall be considered a separate request for each separate lettered subsection.

(1)

That George D. Stewart is presently the Secretary of the Georgia State Democratic Executive Committee.

[fol. 48] (2)

That James H. Gray is presently the Chairman of the Georgia State Democratic Executive Committee.

(3)

That the Georgia State Democratic Executive Committee is recognized as the governing body of the Georgia State Democratic Party.

(4)

That Ben W. Fortson, Jr. is presently Secretary of State of the State of Georgia.

(5)

That the defendant Georgia State Democratic Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for the nomination of candidates for the offices of Governor, Lieutenant Governor and other state house officers.

(6)

That the defendant Georgia State Democratic Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for the nomination of a candidate for the office of United States Senator.

(7)

Defendant Committee is planning to supervise the holding of a statewide primary election on September 12, 1962, and is planning to tabulate and consolidate the ballots cast in such primary election and is planning to certify to [fol. 49] the defendant Fortson the names of persons determined by said Committee to have been nominated in the primary election.

(8)

Defendant Fortson, as Secretary of State, is intending to furnish to the several ordinaries of the State of Georgia official ballots and election supplies and to certify to said ordinaries the names of candidates for the aforesaid offices nominated in the Democratic primary election.

(9)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office since 1872:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(10)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office since 1872:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 50]

(11)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office in this Twentieth Century:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(12)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office in this Twentieth Century:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;

- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(13)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office since the effective date of the Act of the Legislature of the State of Georgia, known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 51]

(14)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office since the effective date of the Act of the Legislature of the State of Georgia, known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;

- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(15)

That since 1872, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

(16)

That in this Twentieth Century, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

(17)

That since the effective date of the Act of the Legislature of the State of Georgia known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

[fol. 52]

(18)

That Fulton County, according to the 1960 United States Census, had a population of 556,326 persons and is Georgia's most populous county.

(19)

That the State of Georgia, according to the 1960 United States Census, had a population of 3,943,116 persons.

(20)

That Echols County, according to the 1960 United States Census, had a population of 1,876 persons and is the least populous county in Georgia.

(21)

That DeKalb County, according to the 1960 United States Census, had a population of 256,782 persons and is the second most populous county in Georgia.

(22)

That the copy of United States Census of Population: 1960, Final Report, PC(1)-12A—Number of Inhabitants—Georgia, prepared by the United States Department of Commerce, Bureau of the Census, attached as an exhibit to this Request for Admissions, is a true and correct copy of same.

(23)

That the population figures shown on Exhibit F attached to plaintiff's petition, for the years 1920, 1930, 1940, and [fol. 53] 1950 are true and correct as shown by the United States Census Report for each of the respective years.

(24)

That notwithstanding a consistent increase in Fulton County's percentage of total population of the State of Georgia since 1920, it has never been accorded but 1.46% of the unit votes in each statewide primary election held by the Georgia State Democratic Party.

(25)

That in the Democratic gubernatorial primary of 1954, the successful candidate received 36.3% of the total popular vote cast in said election for the office of Governor.

(26)

That in the Democratic gubernatorial primary of 1954, the successful candidate received, under the county unit system, 73.6% of the total unit votes of the several counties of Georgia.

(27)

That in the Democratic gubernatorial primary of 1954, the successful candidate received 25%, plus or minus $\frac{1}{2}\%$, of the votes cast in Fulton County in said primary, which, in the circumstances of that primary, constituted a plurality, thereby giving all six unit votes of Fulton County to the successful candidate.

[fol. 54]

(28)

That the Georgia State Democratic Party is planning to tabulate and consolidate the popular votes cast in said primary election to be held on September 12, 1962, on a county unit basis, in accordance with the provisions of the Neill Primary Act, Georgia Laws 1917, pp. 183-189, codified as §34-3213 through §34-3218, Georgia Code Annotated.

(29)

That James H. Gray and George D. Stewart, in their representative capacities as officers of the Georgia State Democratic Executive Committee, are planning to tabulate and consolidate the popular votes cast in said primary election to be held on September 12, 1962, on a county unit basis, in accordance with the provisions of the Neill Primary Act, Georgia Laws 1917, pp. 183-189, codified as §34-3213 through §34-3218, Georgia Code Annotated.

(30)

That since 1900 no candidate for any of the following offices has been on the general election ballot in the State of Georgia other than the candidate of the Democratic Party:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;

- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 55]

(31)

That since 1918 no candidate for any of the following offices has been on the general election ballot in the State of Georgia other than the candidate of the Democratic Party:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(32)

That as of the date of the filing of the complaint in this case, all efforts to repeal the county unit system as imposed by the Neill Primary Act, Georgia Laws 1917, pp. 183-189, have failed.

(33)

That as of the date of filing of the complaint in this case, all efforts to modify the county unit system as imposed by the Neill Primary Act, Georgia Laws 1917, pp. 183-189, have failed.

(34)

That a proposed Constitutional amendment entitled "Election of State Officers—Proposed Amendment of the Constitution No. 6 (Senate Resolution No. 6)", Georgia Laws, Regular Session, 1949, p. 528, was submitted to the people in the general election of 1950 and failed of passage.

[fol. 56]

(35)

That a proposed amendment to the Constitution entitled "State Officers—Primary Elections on County Unit Basis, Proposed Amendment to the Constitution No. 10 (Senate Resolution No. 6)", as it appears in Georgia Laws 1951, p. 101, was submitted to the people in the general election of 1952 and failed of passage.

This 6th day of April, 1962.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, Attorneys for Plaintiff.

Service omitted.

Filed April 9, 1962.

[fol. 57]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT

Plaintiff moves the Court for leave to amend his Complaint on file herein in the following particulars:

1.

Amend Exhibit "F" attached to said Complaint by adding an additional column showing the population figures of the various counties of Georgia according to the final figures of the United States Census for the year 1960. The population figures for the year 1960, presently appearing in said Exhibit "F", are taken from the preliminary figures of the United States Census for the year 1960. It is the purpose of this amendment to bring the figures for the year 1960 set forth in said Exhibit "F" up to date and in agreement with the final figures of the United States Census for the year 1960.

Attached hereto and marked "Amendment to Exhibit "F" is a list of the counties of the State of Georgia and

their respective populations for the year 1960 according to the official United States Census for the year 1960.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 58]

AMENDMENT TO EXHIBIT "F"

| Counties | Population 1960 |
|---------------|-----------------|
| Appling | 13,246 |
| Atkinson | 6,188 |
| Bacon | 8,359 |
| Baker | 4,543 |
| Baldwin | 34,064 |
| Banks | 6,497 |
| Barrow | 14,485 |
| Bartow | 28,267 |
| Ben Hill | 13,633 |
| Berrien | 12,038 |
| Bibb | 141,249 |
| Bleckley | 9,642 |
| Brantley | 5,891 |
| Brooks | 15,292 |
| Bryan | 6,226 |
| Bulloch | 24,263 |
| Burke | 20,596 |
| Butts | 8,976 |
| Calhoun | 7,341 |
| Camden | 9,975 |
| Candler | 6,672 |
| Carroll | 36,451 |
| Catoosa | 21,101 |
| Charlton | 5,313 |
| Chatham | 188,259 |
| Chattahoochee | 13,011 |
| Chattooga | 19,954 |
| Cherokee | 23,001 |
| Clarke | 45,363 |
| Clay | 4,551 |

| Counties | Population 1960 |
|-------------|-----------------|
| Clayton | 46,365 |
| Clinch | 6,545 |
| Cobb | 114,174 |
| Coffee | 21,953 |
| Colquitt | 34,048 |
| Columbia | 13,423 |
| Cook | 11,822 |
| Coweta | 28,893 |
| Crawford | 5,816 |
| Crisp | 17,768 |
| Dade | 8,666 |
| Dawson | 3,590 |
| Decatur | 25,203 |
| DeKalb | 256,782 |
| Dodge | 16,483 |
| Dooly | 11,474 |
| Dougherty | 75,680 |
| Douglas | 16,741 |
| Early | 13,151 |
| Echols | 1,876 |
| [fol. 59] | |
| Effingham | 10,144 |
| Elbert | 17,835 |
| Emanuel | 17,815 |
| Evans | 6,952 |
| Fannin | 13,620 |
| Fayette | 8,199 |
| Floyd | 69,130 |
| Forsyth | 12,170 |
| Franklin | 13,274 |
| Fulton | 556,326 |
| Gilmer | 8,922 |
| Glascok | 2,672 |
| Glynn | 41,954 |
| Gordon | 19,228 |
| Grady | 18,015 |

| Counties | Population 1960 |
|------------|-----------------|
| Greene | 11,193 |
| Gwinnett | 43,541 |
| Habersham | 18,116 |
| Hall | 49,739 |
| Hancock | 9,979 |
| Haralson | 14,543 |
| Harris | 11,167 |
| Hart | 15,229 |
| Heard | 5,333 |
| Henry | 17,619 |
| Houston | 39,154 |
| Irwin | 9,211 |
| Jackson | 18,499 |
| Jasper | 6,135 |
| Jeff Davis | 8,914 |
| Jefferson | 17,468 |
| Jenkins | 9,148 |
| Johnson | 8,048 |
| Jones | 8,468 |
| Lamar | 10,240 |
| Lanier | 5,097 |
| Laurens | 32,313 |
| Lee | 6,204 |
| Liberty | 14,487 |
| Lincoln | 5,906 |
| Long | 3,874 |
| Lowndes | 49,270 |
| Lumpkin | 7,241 |
| McDuffie | 12,627 |
| McIntosh | 6,364 |
| Macon | 13,170 |
| Madison | 11,246 |
| Marion | 5,477 |
| Meriwether | 19,756 |
| Miller | 6,908 |

[fol. 60]

| Counties | Population 1960 |
|------------|-----------------|
| Mitchell | 19,652 |
| Monroe | 10,495 |
| Montgomery | 6,284 |
| Morgan | 10,280 |
| Murray | 10,447 |
| Muscogee | 158,623 |
| Newton | 20,999 |
| Oconee | 6,304 |
| Oglethorpe | 7,926 |
| Paulding | 13,101 |
| Peach | 13,846 |
| Pickens | 8,903 |
| Pierce | 9,678 |
| Pike | 7,138 |
| Polk | 28,015 |
| Pulaski | 8,204 |
| Putnam | 7,798 |
| Quitman | 2,432 |
| Rabun | 7,456 |
| Randolph | 11,078 |
| Richmond | 135,601 |
| Rockdale | 10,572 |
| Schley | 3,256 |
| Screven | 14,919 |
| Seminole | 6,802 |
| Spalding | 35,404 |
| Stephens | 18,391 |
| Stewart | 7,371 |
| Sumter | 24,652 |
| Talbot | 7,127 |
| Taliaferro | 3,370 |
| Tattnall | 15,837 |
| Taylor | 8,311 |
| Telfair | 11,715 |
| Terrell | 12,742 |

| Counties | Population 1960 |
|------------------------|-----------------|
| Thomas | 34,319 |
| Tift | 23,487 |
| Toombs | 16,837 |
| Towns | 4,538 |
| Treutlen | 5,874 |
| Troup | 47,189 |
| Turner | 8,439 |
| Twiggs | 7,935 |
| Union | 6,510 |
| Upson | 23,800 |
| Walker | 45,264 |
| Walton | 20,481 |
| Ware | 34,219 |
| Warren | 7,360 |
| Washington | 18,903 |
| [fol. 61] | |
| Wayne | 17,921 |
| Webster | 3,247 |
| Wheeler | 5,342 |
| White | 6,935 |
| Whitfield | 42,109 |
| Wilcox | 7,905 |
| Wilkes | 10,961 |
| Wilkinson | 9,250 |
| Worth | 16,682 |
| GEORGIA (minus Fulton) | 3,386,790 |
| GEORGIA—Total | 3,943,116 |

Service Omitted

Filed April 18, 1962

[fol. 62]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—

April 18, 1962

The Plaintiff having moved the Court for leave to amend his Complaint in the above matter by adding a column of figures to Exhibit "F" attached to his said Complaint showing the population figures of the various counties of Georgia for the year 1960 according to the final figures of the United States Census for the year 1960;

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in Plaintiff's said Motion, that is, that Exhibit "F" of Plaintiff's Complaint is amended by adding thereto the column of figures relating to population of Georgia Counties for the year 1960 attached to Plaintiff's Motion to Amend, subject to objection.

This 18th day of April, 1962:

Elbert P. Tuttle, United-States Circuit Judge.

[fol. 63]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE OF BEN W. FORTSON, JR. TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

Comes now Ben W. Fortson, Jr., one of Defendants in the above stated matter, and answers the Request for Admissions filed by Plaintiff, as follows:

1.

Defendant admits Request No. 1.

2.

Defendant admits Request No. 2.

3.

Defendant can neither admit nor deny Request No. 3, for the reason that the same is vague in that it does not state by "whom" said committee is supposed to be so recognized.

4.

Request No. 4 is admitted.

[fol. 64]

5.

Request No. 5 is admitted.

6.

Request No. 6 is admitted.

7.

Answering Request No. 7, Defendant is unable to admit same for the reason that he has no knowledge as to whether said committee or some other body or person will consolidate and tabulate said ballots and certify same to this Defendant.

8.

Answering Request No. 8, this Defendant says that he intends to perform whatever duties are required of him by the law of Georgia, of which this Court can take judicial notice. In the past, this Defendant has furnished the form of the ballot, but each county prepares and pays for its own ballots. Unless the law is changed, Defendant plans to follow the same procedure this year.

9.

Answering Requests No's. 9, 10, 11, 12, 13 and 14, Defendant says that he has no readily available records, nor independent recollection relating to the subject matter of said requests, but he assumes that such matters are historical

in nature of which this Court can take judicial notice. Defendant does have various records in the Department of Archives which might reflect some of the matters referred to, but in order for Defendant to answer said request, it would entail considerable research, evaluation and interpretation, which Defendant does not have sufficient time to do in order to be able to answer the request within the time allowed by order of court.

10.

Request No. 15 is denied.

[fol. 65]

11.

Answering Request No. 16, Defendant has no record or independent recollection of the matters therein referred to.

12.

Answering Request No. 17, so far as known to Defendant, said Request is true, although Defendant has not undertaken to perform the extensive research necessary to properly answer same.

13.

Request No's. 18, 19, 20 and 21 are true according to information in this Defendant's possession.

14.

Answering Request No. 22, Defendant has no information as to the authenticity of said document, and is unable to admit same.

15.

Answering Request No. 23, Defendant has not undertaken to compare all of the many statistics set forth in Exhibit "F" with copies of the official census for said years, or to obtain copies of such census and reports for that purpose, and does not understand that he is required to do so for the reason that the Court can take judicial notice of whatever may be shown by the official records of the United States.

16.

Answering Request No. 24, Defendant is unable to admit or deny same, for the reason that at least one county was created after 1920, and two others were merged, and Defendant does not understand that he is required by law to undertake extensive research and computation in order to admit said request.

[fol, 66].

17.

Answering Request No's. 25, 26 and 27, Defendant says that he has records showing the total votes received by said candidate in the State and in each county, on both a popular vote and county unit basis, but Defendant has not undertaken to compute percentages, and does not understand that he is required to do so. Defendant says that the records show that the successful gubernatorial candidate received 234,690 popular votes, a plurality of all the votes cast, and 302 unit votes in the State as a whole; and 19,685 popular votes in Fulton County. Otherwise Defendant is unable to admit or deny said paragraphs.

18.

Answering Request No. 28, Defendant says that he is not a member of the State Democratic Executive Committee, but that said Committee met on April 18, 1962, and adopted rules governing holding of a primary election in 1962, and that said rules speak for themselves. Further than this, Defendant is unable to answer Request No. 28.

19.

Answering Request No. 29, Defendant is unable to admit same for the reason that Defendant has no information as to what said party officials are planning to do, and they can speak for themselves.

20.

Answering Request No's. 30 and 31, Defendant denies same, in that in 1940, the name of Eugene Taimadge appears on the general election ballot as candidate for Gov.

ernor as nominee of the "Independent Democratic Party." Defendant does not have copies of the ballot for all of said periods referred to in said Requests, and has not undertaken to do the extensive research necessary in reviewing those which he has, and does not have sufficient time in which to complete said research in time to answer said Requests.

[fol. 67]

21.

Answering Request No's. 32 and 33, Defendant states that so far as he is advised and informed, the Neill Primary Act has not been repealed, but Defendant has no record or independent recollection of any particular attempts to repeal or modify the same. Defendant does recall an amendment thereto in 1950 (Ga. Laws 1950, p. 79), which is a matter of public record. Defendant is further advised that bills are pending in the Extraordinary Session of the Georgia General Assembly now in progress which seek to modify said Act.

22.

Request No's. 34 and 35 are admitted.

This April 20th, 1962.

Service Omitted

Filed April 23, 1962

Ben W. Fortson, Jr., Secretary of State.

Sworn to and subscribed before me this April 20th, 1962.

Ann L. Adamson, Notary Public, Fulton County, Georgia.

[fol. 68]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE OF JAMES H. GRAY, et al. TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

Come now James H. Gray, as Chairman of the Georgia State Democratic Executive Committee, and George D.

Stewart, as Secretary of the Georgia State Democratic Executive Committee, two of the defendants in the above stated matter, and answer the Request for Admissions filed by plaintiff, as follows:

1.

Defendants admit Request No. 1.

2.

Defendants admit Request No. 2.

[fol. 69]

3.

Defendants can neither admit nor deny Request No. 3, for the reason that the same is vague in that it does not state by "whom" said committee is supposed to be so recognized.

4.

Request No. 4 is admitted.

5.

Answering Request No. 5, these defendants say that the State Democratic Executive Committee has adopted rules providing for a State Democratic Primary on September 12, 1962.

6.

The answer to Request No. 5 also answers Request No. 6.

7.

Answering Request No. 7, these defendants say that the State Democratic Executive Committee will perform such duties as are required by the rules referred to in Answer No. 5 or any applicable law.

8.

Answering Request No. 8, these defendants say they have no knowledge of the plans or intentions of the Secretary of

State. They assume that he will perform his duties under the law.

9.

Answering Requests No's. 9, 10, 11, 12, 13 and 14, these defendants say that the State Democratic Executive Committee, as presently constituted, was provided for by a resolution of the State Democratic Convention held in Macon, Georgia, in October 1958. The Committee has no permanent records from which the requested information could be obtained. These defendants, as individuals, have no information or independent recollection from which they could furnish the information.

[fol. 70]

10.

Request No. 15 is denied.

11.

Answering Request No. 16, defendants have no record or independent recollection of the matters therein referred to.

12.

Answering Request No. 17, so far as known to these defendants, said Request is true, although they have no records from which the question could be accurately answered.

13.

Requests No's. 18, 19, 20 and 21 are true according to published census information.

14.

Answering Request No. 22, defendants have no information as to the authenticity of said document, and are unable to admit same.

15.

Answering Request No. 23, defendants have not undertaken to compare all of the many statistics set forth in

Exhibit "F" with copies of the official census for said years, or to obtain copies of such census and reports for that purpose, and do not understand that they are required to do so for the reason that the Court can take judicial notice of whatever may be shown by the official records of the United States.

16.

Answering Request No. 24, defendants are unable to admit or deny same, for the reason that at least one county was created after 1920, and two others were merged, and defendants do not understand that they are required by law to undertake extensive research and computation in order to admit said request.

[fol. 71]

17.

Answering Requests No's. 25, 26 and 27, defendants say that they have no permanent records showing the total votes received by said candidate in the State and in each county, on both a popular vote and county unit basis. Defendants say that they have examined the answer of the Secretary of State to this Request and, so far as they know, it is correct.

18.

Answering Request No. 28 and Request No. 29, these defendants say that the State Democratic Executive Committee met on April 18, 1962, and adopted rules governing holding of a primary election in 1962, and that said rules speak for themselves. These defendants expect to follow said rules.

19.

Answering Requests No's. 30 and 31, these defendants say that they have no records or other information from which they could answer said Requests.

20.

Answering Requests No's. 32 and 33, defendants state that so far as they are advised and informed, the Neill Primary

Act has not been repealed, but defendants have no record or independent recollection of any particular attempts to repeal or modify the same. Defendants do recall an amendment thereto in 1950 (Ga. Laws-1950, p. 79), which is a matter of public record. Defendants are further advised that bills are pending in the Extraordinary Session of the Georgia General Assembly now in progress which seek to modify said Act.

21.

Requests No's. 34 and 35 are admitted.

Buchanan, Edenfield & Sizemore, By Lamar W. Sizemore, Attorneys for James H. Gray, as Chairman of the Georgia State Democratic Executive Committee, and George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee.

[fol. 72] *Duly sworn to by George D. Stewart, jurat omitted in printing.*

[fol. 73] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed April 25, 1962

Come now the named defendants in the above stated matter, and move to dismiss the complaint on the following grounds:

1.

The court is without jurisdiction of the subject-matter of the suit. The complaint does not present a substantial federal question, because the rights and privileges which it is alleged may be violated arise only under the Constitution and laws of Georgia.

2.

The complaint fails to state a claim upon which relief can be granted.

3.

The complaint fails to state a claim cognizable by a court of equity or appropriate for declaratory relief by a court of equity, or to allege facts authorizing an injunction or declaratory relief, for the reason that the rights asserted by the complainant and alleged to have been violated are political rights and not property rights or civil rights.

4.

The acts and things sought to be enjoined do not violate [fol. 74] any private right of the complainant or work individual damage to him, and he is therefore without such interest in the subject-matter of the suit as would authorize him to maintain it. If the acts complained of constitute wrongs, which is denied, they are public wrongs, not private wrongs, and any redress therefor must be given to plaintiff by the legislative and political departments of government, and cannot be afforded him in equity by this court.

5.

The complaint fails to allege facts appropriate for declaratory relief and fails to allege the existence of an actual controversy between the plaintiff and the defendants. On the contrary, it alleges a mere apprehension of a possible future controversy.

6.

The facts alleged in the complaint fail to show that the action which it is alleged the defendants will take will result in injury or damage to the complainant, or that there is any conflict of interest between the complainant and the defendants, because it affirmatively appears from the facts alleged that unless the result of the primary election, which it is alleged will be conducted, is to nominate persons for whom the complainant did not vote or persons who failed to carry Fulton County, the complainant will have suffered

no damage or injury; and it affirmatively appears from the facts alleged that whether or not the primary will result in injury or damage to the complainant is wholly speculative.

7.

The complaint, in so far as it is proceeding against the defendant Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, is in purpose and effect a suit against the State, and the State has not consented to be sued upon such a cause of action. Accordingly, this court has no jurisdiction to entertain the same.

[fol. 75]

8.

It affirmatively appears from the facts alleged that the State of Georgia is a necessary and indispensable party defendant, and since it cannot be joined, under the Eleventh Amendment to the Constitution of the United States, the Court is without jurisdiction to entertain the complaint.

9.

The Complaint fails to raise a substantial federal question, the validity of the statutes attacked having previously been upheld in *Turman v. Duckworth*, 68 F. Supp. 744 (D. C. Ga. 1946), appeal dismissed, 329 U. S. 675; *South v. Peters*, 89 F. Supp. 672 (D. C. Ga. 1950), aff'd 339 U.S. 276; and in *Cox v. Peters*, 208 Ga. 498, appeal dismissed, 342 U.S. 936.

Wherefore, defendants pray that the complaint be dismissed.

Eugene Cook, Attorney General of Georgia, B. D. Murphy, Deputy Assistant Attorney General, E. Freeman Leverett, Deputy Assistant Attorney General, Attorneys for Defendant Ben W. Fortson, Jr.; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee, and State Democratic Party.

• Service Omitted.

• Filed April 25, 1962.

[fol. 76]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS Filed April 25, 1962

Comes now the named defendants in the above stated case and answer the complaint of plaintiff as follows:

1.

Answering paragraph 1, for want of information sufficient to form a belief, defendants are unable either to admit or deny that petitioner is a citizen of Georgia or of the United States; or that he is a resident of Fulton County, Georgia.

2.

Answering paragraph 2, defendants admit that defendant Stewart is a resident of Fulton County, and that defendant James H. Gray is a resident of Dougherty County, Georgia. The remainder of said paragraph requires no answer.

3.

Answering paragraph 3, defendants admit the defendant Gray is Chairman of the Georgia State Democratic Executive Committee, and that defendant George D. Stewart is Secretary of said Committee. The other allegations of said paragraph allege conclusions of law requiring no answer.

[fol. 77]

4.

Paragraph 4 is denied. Further answering said paragraph, defendants say that the Democratic Party of Georgia is a purely voluntary political party, without a constitution or by-laws, without a roll of members, and without identifiable members, since no law of the State requires any citizen or voter to register his political party affiliations. It has no office or place of business, and no continuity of existence.

The State Democratic Executive Committee is simply an arm or agency of the State Democratic Convention. It also has no place of business and no continuity of existence, and has only such powers as may be conferred upon it by the Convention by which it is created. Neither the party nor the committee is an unincorporated association within the meaning of the Act of the General Assembly of Georgia, approved February 13, 1959. (Ga. Laws, 1959, p. 46)

5.

Paragraph 5 alleges conclusions of law requiring no answer.

6.

Answering paragraph 6, defendants deny that Defendant Committee and Defendant Party are subject to suit for the purposes or in the manner or way alleged therein. Otherwise, said paragraph alleges conclusions of law requiring no answer.

7.

Paragraph 7 is admitted.

8.

For want of information sufficient to form a belief, defendants are unable either to admit or deny so much of paragraph 8 as alleges that plaintiff is within the "class of persons" therein referred to. Defendants say that the remainder of said paragraph seems to plead certain provisions of the Constitution of Georgia, that said Constitution is in writing and speaks for itself.

[fol. 78]

9.

For want of information sufficient to form a belief, defendants are unable either to admit or deny paragraph 9.

10.

Answering paragraph 10, defendants say that the State Democratic Executive Committee has adopted rules providing for a State Primary on September 10, 1962.

11.

Answering paragraph 11, defendants say that Code Sections 34-3212 and 34-3213 are incorrectly set out in "Exhibit B." Defendants deny that Section 34-3215.1 is set out in "Exhibit B." Further answering said paragraph, defendants say that the Statute Law of Georgia speaks for itself. They further say that any democratic primary held in the State will be held in conformity with the rules and any applicable provisions of State law.

12.

Answering paragraph 12, defendants say that Defendant Fortson has certain duties relating to elections as prescribed by law, and that he intends to perform them accordingly. Otherwise, said paragraph alleges matters of law requiring no answer.

13.

Answering paragraph 13, defendants admit that Defendant Fortson has certain duties prescribed by law, which he intends to perform. Otherwise, said paragraph alleges matters of law requiring no answer.

14.

Paragraph 14 is denied.

15.

Paragraph 15 states the contentions of plaintiff, and requires no answer. However, defendants deny that the statutes referred to are arbitrary, discriminatory or unconstitutional for any reason.

[fol. 79]

16.

Answering paragraph 16, defendants say that the Constitution and Laws of Georgia are in writing, and speak for themselves. Except as hereinabove admitted, paragraph 16 is denied.

17.

Answering paragraph 17, defendants admit that Fulton County is the most populous county in the State. The re-

mainder of said paragraph, defendants can neither admit nor deny, for want of information sufficient to form a belief.

18.

Answering paragraphs 18, 19, 20, 21 and 22, defendants say that, for want of information sufficient to form a belief, they can neither admit nor deny the correctness of the census figures pleaded therein. They say, however, that if the matters there pleaded are within the judicial knowledge of the Court, they require no answer, or proof.

19.

Answering paragraph 23, for want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures and computations therein alleged; otherwise, said paragraph is denied.

20.

Answering paragraph 24, Defendants are unable either to admit or deny the accuracy of the figures therein stated. Insofar as said paragraph seems to allege any violation of any right of the plaintiff, it is denied.

21.

For want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures set forth in paragraph 25.

[fol. 80]

22.

For want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures alleged in paragraph 26.

23.

Paragraph 27 is denied.

24.

Paragraph 28 is denied.

25.

Paragraphs 29, 30, 31, 32, 33, 34 and 35 are denied.

26.

Further answering said complaint, defendants show that the county unit system has been consistently followed in Georgia at least since 1777. Under the Constitution of 1777, the Governor was elected by the Legislature, which was composed of representatives from the counties and certain port towns. Representation was on a territorial and trade basis with little regard for population.

Under the State Constitution of 1789, the Governor was elected by the Senate, in which each county had one vote without reference to its population, from a list of three persons nominated by the House of Representatives.

The Constitution of 1798 continued substantially the provisions of the Constitution of 1789, as to the composition of the General Assembly, but provided for the election of the Governor by the entire Assembly instead of by the Senate. Under Georgia's colonial Constitution and its first State Constitution, the Governor was elected on a county unit basis. In 1823, for the first time, provision was made for election of the Governor by the people, beginning in 1825, but it was provided in that case that if no candidate had a majority of the votes, the General Assembly should elect from the two highest by a vote of the members present in the joint session. Substantially the same provisions were carried forward into every State Constitution, and are in the Constitution of 1945.

[fol. 81] In 1842, by constitutional amendment, the State was divided into senatorial districts. Each district was composed of two counties, except the county with the largest population constituted a district. Each district had one Senator. It was provided that the 37 counties having the largest population should each have two representatives and the remaining counties should each have one.

Consistently since 1823, the final choice of the Governor has been left to the General Assembly, when no candidate receives a majority of the popular vote. In elections by the General Assembly, the county unit system prevails.

Each member has one vote. Consistently since 1842 the general plan then first adopted for apportioning representation in the lower House of the General Assembly has been followed. Beginning with the Constitution of 1868, the six largest counties in population had three representatives each; the next 26 largest, two each, and the remaining counties, one each. In 1920, by constitutional amendment, the number having three representatives was increased to eight, and those having two each were increased to thirty.

The political history just set forth relates mainly to the final election of the Governor, not the nomination of party candidates.

In the early days of party politics, the members of the legislature met in party caucuses and nominated the party candidates. Before the War Between the States there were always two strong parties in Georgia, Whigs and Democrats. Thus the Whig members of the legislature would caucus and nominate the party's candidates for State offices. Gradually they came to invite to the caucuses party members from counties not represented in the legislature by Whigs. The same practice was followed by the Democrats. For this practice, Party conventions developed. County representation in the State Convention was on the basis of representation in the Lower House of the General Assembly. The delegates were usually chosen by county mass meetings. At first there was one delegate for each representative. Later there were two delegates for each representative, that is, each county had two unit votes in the State party convention for each representative in the General Assembly. The State convention nominated the party candidates for State offices. About 1880 party primaries began to be conducted and about 1891 the Democratic party adopted the primary system for selecting delegates to the State Convention in lieu of the mass meeting method. This practice continued, however, to be local and optional until about 1898, when, for the first time, the party primary as a basis for nominating candidates for State offices, came into full effect. This was about the time the Populist Party became strong. The State Convention continued to make the party nominations. It was composed of delegates from the various counties chosen as a result of

the primary and always operated on the county unit basis. Uniformly in recent years each county has had two delegates, that is, two votes in the Convention, for each of its members in the House of Representatives. The uniform practice was to require a candidate to get a majority of the unit votes at the Convention in order to be nominated. If a majority of the county unit votes was pledged to a candidate when the Convention assembled, he was nominated without question, but if no candidate had a majority, the Convention balloted until a candidate did receive a majority of all the county unit votes. Frequently the deadlock lasted for a number of days.

Prior to 1917, the county unit rule was established by party practice and party rule. There was no law on the subject. The Neill Primary Law of 1917 (Ga. Laws 1917, p. 183) simply adopted the party custom, which had been in vogue for more than a century. The only substantial change in the prevailing practice was to provide for a second primary in case no candidate for Governor or United States Senator had a majority of the county unit votes as the result of the first primary instead of having the Convention settle the matter. The Neill Primary Law is applicable to all political parties alike, but does not require any party to have a primary.

In actual practice there has only been one occasion since the Neill Primary Act of 1917 when the successful candidate for the Democratic nomination for Governor, under the county unit rule, did not receive a plurality of the popular votes. In 1946, Honorable Eugene Talmadge was nominated for Governor under the county unit rule, although another candidate received a plurality of the popular votes.

Since 1917 there has been only one occasion when the successful candidate for the United States Senate under the county unit system did not receive a majority of the popular votes. That was in 1938, when Senator Walter F. George received 282 county unit votes, a majority of all, and was nominated. He received a plurality, but not a majority of the popular votes.

In every race for the United States Senate, with the possible exception of 1920, the successful candidate under the

county unit rule has carried Fulton County. In every such case, the successful candidate had a majority of the county unit votes and at least a plurality of the popular votes.

In every primary for Governor except four, the successful candidate under the county unit rule carried Fulton County. In three of those primaries, 1932, 1934, and 1946, Honorable Eugene Talmadge was the successful candidate under the unit rule. In 1948, Honorable Herman Talmadge was the successful candidate under the county unit rule, but he did not carry Fulton County, although he did get a majority of all the popular votes.

In 1932, Eugene Talmadge had a plurality of popular votes and a majority of the unit votes, but did not carry Fulton County. In 1934, he had a majority of the unit [fol. 84] votes and a majority of the popular votes, but did not carry Fulton County. In 1940, he carried Fulton County and had a majority of the unit votes and a majority of the popular votes. He would have had a majority of the unit votes without Fulton County. In 1946, he had a majority of the unit votes, but did not have a majority or a plurality of the popular votes and did not carry Fulton County.

Defendants have set forth the political history of the State and the facts hereinbefore detailed for the information of the Court, and to show that the present county unit system simply follows the time-honored method of nominating candidates which has been in force in Georgia for many generations, and that it does not in point of fact operate unfairly or unjustly or to the injury or damage of anybody.

Defendants also show that voters in the metropolitan and urban areas have opportunities for political organization and advancement not available to voters in areas of less population density; that Georgia is the largest state east of the Mississippi River, comprising myriad combinations of rural, urban and metropolitan areas, all embracing a wide cross-section of agricultural, commercial and industrial endeavors, and having people with widely-varying economic, social and political interests; that large, efficiently-organized and well-financed groups and organizations exist in the several large metropolitan areas possessed

of the power, ability and demonstrated inclination to effectively organize and regiment political action along group-interest lines; that such opportunities for concerted and collective action are not as readily available to areas of smaller population concentration; that powerful and influential newspaper and other communication media exist in the great metropolitan centers which daily exercise their forces so as to marshal public opinion along sectional and group interest lines; that less populous areas lack equivalent or comparable means of communication capable of mobilizing public opinion in accordance with local interests; and that the county unit method of nominating candidates in primary elections is reasonably designed to give recognition to the pattern of state organization on a county unit basis, and to achieve a reasonable balance as between urban and rural electoral power.

27.

Defendants say that there is a school of political thought in Georgia, to which the plaintiff evidently belongs, which does not believe in the county unit system. Persons having such views have heretofore sought to strike down the county unit system by resort to federal litigation. In 1946, Honorable Eugene Talmadge was nominated as the Democratic candidate for Governor under the county unit system. One of his opponents received a plurality of the popular vote, but Mr. Talmadge had an overwhelming majority of the county unit votes. Certain disgruntled people, evidently dissatisfied with the result of the primary, brought a suit in the United States Court seeking to enjoin the election of Mr. Talmadge because he had been nominated under the county unit system. A three-judge Federal Court, presided over by the Honorable Samuel H. Sibley, of the United States Court of Appeals for the Fifth Circuit, held that the Georgia county unit law was valid and constitutional. That case was carried to the Supreme Court of the United States, and the Supreme Court refused to review the decision of Judge Sibley.

In 1950, a man named South, who evidently has the same political views as the plaintiff here, brought a suit through

able counsel in another three-judge court, seeking to enjoin the use of the county unit system in the 1950 primary, claiming that to do so would deprive South and his colleague, Mr. Harold C. Fleming, of the equal protection of the laws. The plaintiffs there claimed that they had been invited by the Federal Court to bring that suit because the earlier suit of *Turman V. Duckworth*, relating to the 1946 [fol. 86] primary, had been brought after the primary. They sought to enjoin use of the county unit system in 1950. They used substantially the same facts as are used here and no doubt counsel here will use the same argument as was used there. They said that the county unit system violated the rights of the plaintiffs there in the same manner as the plaintiff here now says his rights were violated. The three-judge court denied relief. The case was decided in the lower court before the Democratic Executive Committee met to fix rules in 1950. The plaintiffs carried the case to the Supreme Court of the United States and the Supreme Court of the United States upheld the action of the lower court and denied the relief sought.

The plaintiff here was not a party to that suit, but it was a class bill and in equity and good conscience he is bound by it. If he can re-litigate the questions that were litigated there, every voter in Georgia who is disgruntled or dissatisfied at the result of any future primary can re-litigate the same questions. The Supreme Court of the United States has twice passed upon the question here sought to be made, and that ought to be an end of the litigation.

28.

Defendants further answering the plaintiff's petition, say that the county unit system has not only been in force for many, many generations, ever since Georgia has been a State and before, but it is right and fair and operates in the interest of good government.

[fol. 87] Wherefore, Defendants pray that the prayers of the complaint be denied, and that Defendants be discharged with their costs.

Eugene Cook, The Attorney General of Georgia, B. D. Murphy, Deputy Assistant Attorney General, E. Freeman Leverett, Deputy Assistant Attorney General, Attorneys for Defendant, Ben W. Fortson, Jr.; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee, and State Democratic Party.

[fol. 88] *Duly sworn to by Ben W. Fortson, Jr., jurat omitted in printing.*

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed April 25, 1962

Plaintiff moves the Court for leave to amend his complaint on file herein in the following particulars:

1.

Amend Exhibit "B" attached to said complaint by setting forth therein the language of Georgia Acts 1943, page 347, codified as Section 34-3215.1, Code of Georgia Annotated.

2.

Attached hereto and marked "Supplement to Exhibit "B" is the language of said Section 34-3215.1.

Heyman, Abram, Young, Hicks & Maloof, By Morris B. Abram, By Maurice N. Maloof.

[fol. 90]

SUPPLEMENT TO EXHIBIT "B"

34-3215.1 CERTIFICATE OF RESULT OF ELECTION.—

Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State.

of this State; such certificate to be signed by the chairman and secretary of the State Committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election. (Acts 1943, p. 347.)

[fol. 91]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—
April 25, 1962

The plaintiff having moved the Court for leave to amend his Complaint in the above matter by setting forth the provisions of Georgia Acts, 1943, page 347 (Section 34-3215.1, Code of Georgia Annotated) in Exhibit "B" attached to his said Complaint;

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in Plaintiff's said Motion, that is, that Exhibit "B" of Plaintiff's Complaint is amended by adding thereto the provisions of Georgia Acts, 1943, page 347 (Section 34-3215.1, Code of Georgia Annotated), attached to Plaintiff's Motion to Amend, subject to the objections of the Defendants.

This 25th day of April, 1962.

Elbert P. Tuttle, U. S. Circuit Judge.

[fol. 92]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed April 26, 1962

Plaintiff moves the Court for leave to amend his complaint on file herein in the following particulars:

1.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3212" by striking therefrom the following language:

"which is hereby fixed as the second Wednesday in September of",

which stricken language begins on line 7 and terminates on line 8 of the first page of said Exhibit "B" and substituting in lieu thereof the following:

"which day shall be fixed by the State Executive Committee of the political party holding such primary."

2.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3212" by striking therefrom line 23 of the first page of said Exhibit "B" which reads:

"and published in a newspaper published at the Capitol, within"

and substituting in lieu thereof the following:

"and published at least one time in a newspaper published at the Capitol, within".

[fol. 93]

3.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by striking therefrom the language:

"The first Wednesday in October"

which stricken line begins on the fourth line of the third page of said Exhibit "B" and terminates on the fifth line of the third page of said Exhibit "B" and substituting in lieu thereof the following:

"a day fixed by the State Executive Committee of the political party holding such primary election."

4.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by striking therefrom the eleventh line on page 3 of said Exhibit "B" which reads:

"within ten days after said second primary election and published"

and substituting in lieu thereof the following:

"within ten days after said second primary election, and published at least one time."

5.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by adding thereto at the end thereof on page 5 of said Exhibit "B" and immediately preceding the beginning of the portion of Exhibit "B" designated Code "#34-3214" a new and additional sentence which shall read as follows:

"The day shall be fixed by the Committee at least thirty days before the day on which said primary election is to be held."

Filed April 26, 1962.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 94] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—
April 26, 1962

Plaintiff having moved the Court for leave to amend his Complaint in the above matter by amending Code Sections 34-3212 and 34-3213 which are set forth in said Exhibit "B" attached to his said Complaint,

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in the attached and foregoing Motion of Plaintiff to amend, subject to the objections of the Defendants.

This 26 day of April, 1962.

Elbert P. Tuttle, U. S. Circuit Judge.

[fol. 95] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT ALLOWED BY VERBAL
ORDER OF COURT AND FILED IN OPEN COURT—
April 27, 1962

Plaintiff moves the Court for leave to amend his Complaint on file herein in the following particulars:

1.

Plaintiff moves to amend his said Complaint in the above styled case by adding two new and additional paragraphs thereto which new paragraphs shall be numbered as Paragraphs 36 and 37 and shall follow immediately after Paragraph 35 of said Complaint, which new paragraphs shall read as follows:

"36

Plaintiff shows that any system whereby the individual votes cast in the forthcoming Democratic Primary election are consolidated on a county wide basis or by any other geographical grouping in such a manner as to cause the vote cast by petitioner in said election to have less value than the vote cast by any other voter in such election residing outside of Fulton County violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution and the Seventeenth Amendment of the Constitution of the United States.

"37

Plaintiff shows that after the filing of his Complaint in the above entitled action the General Assembly of Georgia has enacted an amendment to the said Neill Primary Act set [fol. 96] forth in Exhibit "B" to Plaintiff's Complaint, which amendment provides in substance that the total number of units shall be 547 of which Fulton County shall receive 40. Plaintiff shows that said amendment does not cure the unconstitutionality of the said Neill Primary Act. Rather said Amendment itself, as well as said Neill Primary Act as amended, contrive to violate the Fourteenth and Seventeenth Amendments to the Constitution of the United States in the manner previously set forth herein by placing Petitioner in a class of persons discriminated against without jurisdiction or reasonable basis in that said Act as amended creates an arbitrary and unconstitutional classification among voters of the State based solely upon geographical location of residents and deprives Petitioner of his constitutional right to vote for United States Senator and to be free from discrimination in exercising his franchise."

2.

Plaintiff moves to amend the prayers of his Petition by adding thereto two new and additional prayers to be designated as prayers "(g)" and "(h)" which shall follow immediately after prayer "(f)" and which shall read as follows:

"(g)"

"Petitioner further prays that the Court issue its declaratory judgment holding that the said Neill Primary Act as amended on April 27, 1962, by the General Assembly of Georgia to be void and unconstitutional insofar as said amended act provides for the nomination by Defendant party of any candidate for United States Senator or statewide office under any "County Unit" or "Geographical Unit" System whereby individual votes cast in said election are consolidated by geographical groupings and assigned values other than one unit for each popular vote cast.

[fol. 97]

"(h)

Petitioner further prays that Defendant party and Executive Committee and Defendants Gray and Stewart be each restrained and enjoined with respect to the forthcoming Democratic Primary election to be held September 12, 1962 and any primary election hereafter conducted by said Defendant party from tabulating ballots cast in such primary and selecting any nominee, and publishing and certifying the nomination of any candidate and conducting and governing any primary election and from supervising the tabulation and consolidation of votes cast in any such primary election on any basis other than a popular vote basis where by each individual vote cast in such primary is given equal weight with every other vote cast in such primary."

Heyman, Abrami, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 98]

PLAINTIFFS' EXHIBIT 4

(Letterhead of Fulton County, Atlanta 3, Georgia)

TO WHOM IT MAY CONCERN:

This is to certify that JAMES O. H. SANDERS registered and qualified for voting purposes in this office on Sept. 2, 1941, giving age as 44. Date of birth shown on registration record is Nov. 15, 1896. Address shown on registration record is: 67 Blackland Rd. N. W. Place of birth Mt. Pleasant, South Carolina. Mother's maiden name Frances Sanders.

LEON G. HAY, Chief Registrar
Fulton County, Georgia

By /s/ NORMA T. HAYGOOD

Deputy

[SEAL]

The above Mr. James O. H. Sanders is a registered qualified voter in Fulton County, Georgia, as of this date. April 25, 1962.

/s/ YOUNG HOWELL
Young Howell
Fulton County Registrar

PLAINTIFFS' EXHIBIT

RULES
AND
REGULATIONS
OF THE
State Democratic
Executive Committee
of Georgia

GOVERNING
DEMOCRATIC PRIMARY
ELECTIONS

ADOPTED APRIL 18, 1962

STATE DEMOCRATIC EXECUTIVE COMMITTEE OFFICERS

James H. Gray, *Chairman*
The Albany Herald
Albany, Ga.

James S. Peters, *Vice-Chairman*
Manchester, Ga.

Mrs. Bruce "Orville" Schaeffer, *Vice-Chairman*
Toccoa, Ga.

Wallace L. Jernigan, *Vice-Chairman*
Homerville, Ga.

Anton F. Solms, *Vice-Chairman*
Realty Building
Savannah, Ga.

R. Carter Pittman, *Vice-Chairman*
P. O. Box 891
Dalton, Ga.

Glenn W. Ellard, *Vice-Chairman*
Cornelia, Ga.

Charlie Baldwin, *Vice-Chairman*
Madison, Ga.

DeNean Stafford, *Vice-Chairman*
Tifton, Ga.

George D. Stewart, *Secretary*
711 Hurt Building
Atlanta 3, Ga.

Eric Holmes, *Asst. Secretary*
324 Fulton Federal Building
Atlanta 3, Ga.

Dave Padgett, *Treasurer*
P. O. Box 4418
Atlanta 2, Ga.

George M. Bazemore, *Pres.*
First National Bank
Waycross, Ga.

STATE AT LARGE COMMITTEEMEN

George T. Bagby
Dallas, Ga.

Mac Barber
Commerce, Ga.

J. Mack Barnes
Waycross, Ga.

John B. Bedingfield
Box 244
Dublin, Ga.

Dr. John Bell
Dublin, Ga.

Valene Bennett
Alma, Ga.

James L. Bentley, Jr.
1021 William-Oliver Bldg.
Atlanta 3, Ga.

D. Braxton Blalock, Jr.
1224 Johnson Ferry Road, N.E.
Atlanta 5, Ga.

Edgar Blalock
Jonesboro, Ga.

Charles J. Bloch
Suite 520, First National Bank Bldg.
Macon, Ga.

William R. Bowdoin
3828 Wieuca Road, N.E.
Atlanta 5, Ga.

Garland T. Byrd
Butler, Ga.

Lee Carter
Hartwell, Ga.

William M. Crim
95 Merritts Ave.
Atlanta, Ga.

Fred Derrick, Sr.
Clayton, Ga.

Whitfield R. Forrester
First State Bank Bldg.
Cordele, Ga.

Ed T. Fulford
Dawson, Ga.

Sims Garrett, Jr.
1006 Bolder Crest Drive
Marietta, Ga.

Peter Zack Geer
Colquitt, Ga.

Mrs. Will Gholston
Comer, Ga.

James L. Gillis, Jr.
Soperton, Ga.

James D. Gould
1608-12 Newcastle
Brunswick, Ga.

- Charles L. Gowen
434 Trust Company of Georgia Bldg.
Atlanta, Ga.
- Roy V. Harris
1007 Southern Finance Bldg.
Augusta, Ga.
- E. L. Hatton
Hazlehurst, Ga.
- Ben A. Hodges
Waycross, Ga.
- Howell Hollis
Columbus, Ga.
- Buford Ingle
Resaca, Ga.
- Roy R. Kelly
Monticello, Ga.
- James C. Mann
Conyers, Ga.
- Byron H. Mathews, Jr.
Newnan, Ga.
- Marvin E. Moate
Sparta, Ga.
- John R. McCannon
124 McDonough Street
Jonesboro, Ga.
- Robert C. Norman
Augusta, Ga.

Sheriff Lynn J. Norris
Thomson, Ga.

James C. Owen, Jr.
Griffin, Ga.

Dixon Oxford
Dawson, Ga.

Mrs. B. E. (Ruth) Pelham
Ellaville, Ga.

Henry Peskin
Winder, Ga.

G. B. (Jake) Pollard
Appling, Ga.

Ralph Primm
Rome, Ga.

James G. Raines
Dawson, Ga.

Jack B. Ray
Warrenton, Ga.

Oscar Roberts
Carrollton, Ga.

J. Mack Robinson
3525 Northside Drive, N.W.
Atlanta 5, Ga.

Carl E. Sanders
Augusta, Ga.

Sheriff J. O. (Jim) Sikes
Folkston, Ga.

George L. Smith, II
Swainsboro, Ga.

Mrs. Lucile Tate
Tate, Ga.

William P. Trotter
LaGrange, Ga.

Frank S. Twitty
Camilla, Ga.

Robert D. Tysinger
Carrollton, Ga.

John B. Walker
McRae, Ga.

William A. Ward, Jr.
507 North Atlanta St.
Smyrna, Ga.

Louis Warlick
Adairsville, Ga.

Hugh Whitworth
Lavonia, Ga.

Sid Williams
Austell, Ga.

Grady Williamson
Vienna, Ga.

Jimmy Williamson
Darien, Ga.

LIST OF COMMITTEEMEN FROM THE CONGRESSIONAL DISTRICTS

First District

James Darby
Vidalia, Ga.

Ralph Dawson
Ludowici, Ga.

Robert Gray Dwelle
Millen, Ga.

Duncan A. McRae, Jr.
Mt. Vernon, Ga.

Paul Stone
Waynesboro, Ga.

Everett Williams
Statesboro, Ga.

Second District

Hubert Eskew
Cairo, Ga.

Jimmy Hill
Blakely, Ga.

Harley Mitchell
Quitman, Ga.

Fred Scott, Jr.
Thomasville, Ga.

Ed Stapleton
Donalsonville, Ga.

Robert Wright
Moultrie, Ga.

Third District

G. A. Cauley (Sheriff)
Fitzgerald, Ga.

Nelson Coffin
Cuthbert, Ga.

Jim Ferguson
Dawson, Ga.

Robert Lee
Leesburg, Ga.

Walter Rylander
Americus, Ga.

Judge Charles W. Worrill
Cuthbert, Ga.

Fourth District

Frank W. Allcorn, Jr.
Warm Springs, Ga.

Virgil Bledsoe
Franklin, Ga.

Bill Lee
Forest Park, Ga.

Quimby Melton, Jr.
Griffin, Ga.

Otis Nixon
Covington, Ga.

Hayne Waldrop
Villa Rica, Ga.

Fifth District

Ivan Allen, Jr.
29 Pryor Street, N.E.
Atlanta 3, Ga.

Jesse Draper
Grant Bldg.
Atlanta 3, Ga.

Harold W. Ivey
3133 Maple Drive, N.W.
Atlanta 13, Ga.

Abit Massey
Decatur, Ga.

Guy Rutland, Jr.
703 Clairmont Avenue
Decatur, Ga.

Conrad Sechler
Tucker, Ga.

Sixth District

Hal Bell
406-7 Grand Bldg.
Macon, Ga.

Tom Carr
Sandersville, Ga.

Phillip Chandler
Milledgeville, Ga.

Tom Green
First National Bank & Trust Co.
Macon, Ga.

Sheriff John Stanley
Louisville, Ga.

Seventh District

J. R. (Ray) Bates
Dalton, Ga.

Judge John Davis
Summerville, Ga.

Alpha Fowler
Douglasville, Ga.

Charles Pannell
Chatsworth, Ga.

Judge Arthur Peck
Trenton, Ga.

Eighth District

Ward Harrison
Folkston, Ga.

William Killian
Brunswick, Ga.

Judge H. Langdale
Valdosta, Ga.

Sheriff Robert Lee
Waycross, Ga.

Downing Musgrove
Homerville, Ga.

Mrs. Eugene Talmadge
McRae, Ga.

Ninth District

Carl Barrett
Holly Springs, Ga.

James A. Dunlap
Gainesville, Ga.

Mose Gordon
Commerce, Ga.

Frank "Dick" Gross, Jr.
Toccoa, Ga.

Fred Jones
Dahlonega, Ga.

Charlie Maloof
Helen, Ga.

Tenth District

Phil Campbell
Watkinsville, Ga.

Julian Cox
Athens, Ga.

Charles H. Evans, Jr.
Warrenton, Ga.

Robert E. Lee
Elberton, Ga.

Sam P. McGill
Washington, Ga.

Henry G. Neal
Thomson, Ga.

BE IT RESOLVED by the Executive Committee of the Democratic Party of Georgia duly assembled in regular session on April 18, 1962 in the City of Atlanta as follows, to-wit:

I.

That a Democratic Primary election be held on September 12, 1962 in each of the counties of this State for the nomination of candidates of the Democratic Party for the following offices, whether for full or unexpired terms, or both, to-wit:

United States Senator, Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, Judges of the Court of Appeals, Representatives in Congress of the United States from the various Congressional Districts of the State, Judges of the Superior Courts and Solicitors General required by law to be elected in the general election this year, Senators from the various Senatorial Districts (except as Rule XXVI herein may be applicable), Representatives in the General Assembly from the various counties (except as Rule XXVI herein may be applicable), members, respectively, of the several County Democratic Executive Committees, and such other offices

as are to be filled in the general election this year, 1962, for which candidates should be nominated in the Statewide Primary. The Chairman and Secretary of this Committee are directed to include such offices as may be omitted or which, owing to later developments, should be included.

The entries for the State Primary shall close May 5, 1962, at 12:00 o'clock noon, Eastern Standard Time.

II.

The primary election shall be conducted in accordance with the laws of this State and the customs of the Party, in so far as they do not conflict with existing laws and these rules.

All duly registered electors are qualified to vote in said primary if they possess the legal qualifications prescribed in Paragraph II, III, and IV of Section I, Article II, of the present Constitution of Georgia, and in addition there-to are qualified in accordance with the rules and regulations of the Democratic Party of Georgia governing the said primary as herein contained, or as may be promulgated by proper authority of the Party prior to the holding of the said primary.

In addition to being a qualified and registered voter according to law and in accordance with the rules and regulations of the Party, a voter must pledge himself or herself to sup-

port in the general election to be held in November, 1962, all candidates nominated by the Democratic Party of Georgia in this primary, or in any run off or special primary held in Georgia by said Party, for the nomination of county, district, or state offices, preceding the general election aforesaid, and does by voting in said primary so pledge himself or herself.

The County Executive Committee of the Party holding the primary in each County and/or the Managers in charge of the primary are hereby empowered to decide whether or not a person offering to vote, is qualified under the provisions of this rule.

III.

It shall be the duty of the Democratic Executive Committee of each county to select and properly advertise the legal place or places of voting in each election precinct of the county; to select, or provide for selecting, capable managers and clerks for conducting the primary and administer the oaths to them; to furnish said managers a list of all registered and qualified voters in the respective districts; to see to printing and proper distribution of all necessary blanks and ballots; and to make all other necessary arrangements for holding such primary election in their respective counties. In selecting managers and clerks, they shall, so far as practicable give recognition

to all candidates. The polls shall open at 7:00 o'clock A.M., Eastern Standard Time, and close at 7:00 o'clock P.M., Eastern Standard Time, except where otherwise provided by local laws.

IV.

The Secretary of this committee shall prepare an official ballot containing the names of all qualified candidates for nomination to the various offices filled by statewide vote and forward the same to the Chairman of each County Committee; and such Chairman of each County Committee shall follow the form of said official ballot in having ballots for his county printed, taking care to see that the names of all legally qualified candidates for nomination of officers to be voted on in said county at said primary election are printed thereon as worded in the official ballot.

In those counties where voting machines are used when authorized by law, the form of said official ballot shall be followed in naming the incumbent official to be succeeded and in describing the office to be filled.

V.

No person shall be deemed a candidate in said primary unless he is legally qualified to hold the office for which he announces is a valid member and adherent of the Democratic Party of Georgia, gives the notice hereinafter

required, pays the assessments hereinafter prescribed, by the time hereinbefore named, and complies with all the requirements of these rules. The voter shall erase from the ballot the names of those persons for whom he does not desire to vote, leaving on said ballot only the names of those persons for whom he desires to vote, unless voting machines are used in the county, in which case the County Democratic Executive Committee shall prescribe rules governing marking the ballot. If more than one candidate is to be nominated for a particular office each voter shall vote for as many persons as there are nominations to be made; otherwise his vote for candidates for that particular office shall not be counted. No ballot shall be counted which does not conform to the official ballot.

VI.

Candidates for United States Senator, Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, and Judge of the Court of Appeals who receive respectively the highest number of votes in each county, shall be considered to have carried that county and entitled to the full vote of such county on the county unit basis, that is to say, two votes for each Representative to which such county is

entitled in the lower House of the General Assembly, and if any two or more candidates should tie for the highest number of popular votes received in any county, the county unit vote of such county shall be equally divided between the candidates so tying.

VII.

All candidates for Judges of the Superior Court and Solicitors General shall be voted for only in the counties of their respective circuits; and the candidates receiving the largest number of popular votes in their respective circuits shall be declared the Democratic nominees; and where two or more are to be nominated for concurrent terms in the same circuit, each candidate in such primary shall be required to designate the place sought by naming the incumbent, and it shall so appear on the ballot.

VIII.

In so far as the primary relates to the nomination of candidates for Congress from various Congressional Districts, such candidates shall be voted for only in the counties comprising their respective districts; and the Congressional Democratic Committee of each District shall determine whether the county unit or popular vote plan shall prevail. Each such Congressional Democratic Committee may adopt rules and regulations, not in conflict with these rules and regulations as it may

deem proper, and may provide for holding a Democratic Convention in such District at such time and place, and under such rules and regulations, as such Congressional Committee may adopt.

IX.

The County Democratic Executive Committee of each County shall on the 13th day of September, 1962, at 10:00 o'clock A. M., Eastern Standard Time, meet at the court house in said County, canvass and declare the result as shown by the returns made by the various elections managers; the Chairman of each County Committee shall certify the results and transmit same to the Secretary of the State Democratic Executive Committee at once as time is of the essence.

The Chairman and Secretary of the State Democratic Executive Committee shall consolidate and publish the results of said election as shown by the returns certified by the various County chairmen and shall certify the names of all Party nominees to the proper officials at least forty-five days before the general election of 1962.

X.

In making the compilation the following rules shall be adhered to:

The county unit rule, as hereinbefore prescribed shall prevail inviolate in making nomi-

nations of candidates for all offices filled by statewide vote.

The candidate for United States Senator and Governor who receives a majority of County unit votes for the nomination sought, shall be declared the nominee of the Democratic party for the office in question; and in each case the unit vote of all counties carried by each candidate shall be counted for such candidate.

If there are only two candidates for United States Senator or Governor and they shall each receive an equal number of county unit votes, the one who shall have received a majority of popular votes shall be declared the nominee of the party for said office.

If there are more than two candidates for United States Senator or Governor and no candidate for that office receives a majority of all the county unit votes, there shall be a second primary for such office, as herein provided, at which the two candidates receiving the highest number of county unit votes at the first primary shall be candidates for United States Senator or Governor. If the result of the second primary shall be that the candidates for United States Senator or Governor shall each receive an equal number of county unit votes (that is, if each such candidate shall receive one-half of the whole number of county unit votes), then the candidate receiving the highest number of popular votes shall

be declared the nominee for such office.

In the event it becomes necessary to hold a second Primary for a nominee for United States Senator or Governor the same shall be held on September 19, 1962, in accordance with the rules of the State Democratic Executive Committee and provisions of law applicable thereto.

In the event of a second Primary, the result of the Primary shall be consolidated and published by the Chairman and Secretary of the State Democratic Executive Committee after the County Chairmen have consolidated the returns in each County at ten o'clock A.M. Eastern Standard Time, September 20, 1962, and forwarded the results to the Secretary of the State Democratic Executive Committee immediately thereafter. The Chairman and Secretary of this Committee shall certify the name of the Party nominee of such second Primary to the proper officials not later than three days after such second Primary.

The candidate for offices to be filled by statewide vote (but not including Judges of the Superior Courts and Solicitors General) who receive the highest number of county unit votes, shall be declared the nominees of the Democratic Party for such offices. If the two highest candidates for any office receive the same number of county unit votes, the one who receives the largest number of popular votes in the primary shall be declared the nominee.

XI.

If there shall be a recount of the ballots in any county pursuant to the Act of the General Assembly of Georgia approved March 27, 1941, as amended by an Act approved Feb. 15, 1962, known as the Primary Election Recount Act, the certification of the result of the primary election in such county, made pursuant to these rules, shall be superseded by the result of the recount of the ballots as made by the Committee provided for by said Act of March 27, 1941, as amended, upon the report thereof being filed with the Executive Committee of the County, if the recount relates to a county office, and upon such report being filed with the Chairman of this Committee if the recount relates to an office other than a county office.

The consolidation of the result of the primary which the Secretary of this Committee is required to make shall show the result of the primary as certified under the provisions of these rules, as the same may be corrected by reason of any recount of ballots made pursuant to said Act as amended.

XII.

All contests of said primary election which shall require a recount of the ballots shall be conducted under and in conformity with said Act approved March 27, 1941 as amended. Should any candidate desire to contest the result of the

primary election in any county upon grounds not contemplated or provided for by said Act approved March 27, 1941, as amended, he shall, within five days from the date of said primary, file with the Secretary of the County Executive Committee a written notice of said contest, which shall set forth in detail the grounds thereof. In the absence of the Secretary, such notice may be filed with any member of the County Executive Committee.

It shall be the duty of the Chairman of the County Executive Committee to call a meeting of the County Executive Committee after giving two days' notice thereof to the parties in such contest and the County Executive Committee shall, at such meeting, proceed to hear and determine the contest. The Chairman of the County Committee shall certify to the Secretary of the State Executive Committee the returns and results in such county as soon as the contest is heard and determined, which shall in no event be later than ten days after the filing of the notice of the contest. Either party to such contest who is dissatisfied with the determination of the County Executive Committee may appeal in writing to the State Executive Committee. Such appeal must be filed with the Secretary of the State Executive Committee within five days after the contest is determined by the County Committee and must show by affidavit that a copy thereof was served upon the opposite party to the contest before its filing with the Secretary of

the State Committee. Said contest shall be heard and decided by the Contest Committee named by the State Chairman. The appeal shall be heard upon the evidence submitted to the County Executive Committee and no new evidence shall be submitted to the Committee except newly discovered evidence.

The appellant shall file a copy of his appeal with the secretary or chairman of the County Committee hearing the contest and it shall be the duty of the Chairman and Secretary of the County Committee, within three days from the filing of the copy of the appeal with the secretary of the County Committee, to transmit to the Secretary of the State Executive Committee the findings of the County Committee and a complete transcript of the evidence upon which such findings were made and all records of the contest. This record shall be verified by the affidavit of the Chairman and the Secretary of the County Committee. When the contest is determined the result of its determination shall be certified to the Chairman of the County Executive Committee, where the contest originated, by the Secretary of the State Executive Committee. The finding of the Contest Committee on such contest shall in all cases be final and conclusive of all the rights of the parties to the contest, and the County Executive Committee in making its certificate of Democratic nominees to the proper county or state authority

for the general election, shall be bound thereby and certify in conformity therewith.

XIII.

No candidate in said primary election shall be declared the nominee of the party for any office if it is proved that in the conduct of his campaign for the nomination he violated any election law of Georgia, or in case of candidates for the National Congress, any election law of Georgia or of the United States.

XIV.

The State Democratic Executive Committee is hereby called to meet at eleven o'clock a. m., Eastern Standard Time in the City of Atlanta on the 21st day of September, 1962, to canvass the result of said primary election in accordance with these rules and nominate candidates in conformity with such results and direct the certification of the nominees to the proper officials and to attend to such other business of the party as may be properly brought before the committee. The Chairman of the Committee shall select a suitable place for holding such meeting.

XV.

In the event of a second primary election, the special subcommittee, acting in conjunction with the Chairman and Secretary of this Com-

mittee, referred to hereafter shall have full power and authority to levy reasonable assessments upon the candidates participating in said second primary, and to make such other rules and regulations regarding it, not in conflict with the laws of Georgia and the rules of this Committee, as may be necessary.

XVI.

The candidates for United States House of Representatives who are nominated in this primary shall appoint a Congressional Committee to serve for the next two years, which Committee shall meet immediately upon its appointment and organize by electing such officers as it determines necessary. Vacancies in any Congressional Democratic Executive Committee shall be filled by appointment of the Congressional incumbent provided he is a Democrat, otherwise vacancies shall be filled by the Committee.

The State Senatorial candidate in each Senatorial District in this State who is nominated at this primary may name a Senatorial Committee to serve for two years, who shall meet and organize by electing such officers as it deems necessary. Vacancies occurring on said Committee shall be filled by appointment of the Senatorial incumbent provided he is a Democrat, otherwise vacancies shall be filled by the Committee.

XVII.

There is hereby created a sub-committee to be known as the Special Primary Sub-Committee which shall be composed of the Chairman and Secretary of the State Democratic Committee and five members of the State Democratic Executive Committee, named by the Chairman, which said Sub-Committee shall handle details of the primary subject to these rules. The said sub-committee is authorized and empowered further to amend these rules and make such other rules and regulations relating to all statewide primaries held in 1962 as in its discretion it may deem advisable.

XVIII.

No manager, clerk or other officer engaged or officiating in any primary shall give out, make known, or furnish, during the progress of such primary, any information concerning the number of votes that have been polled for any candidates.

XIX.

The ballots at said primary shall be publicly counted and the count shall not be begun until the polls are officially closed.

XX.

These rules shall remain in full force and effect and apply where applicable to all Party matters until repealed or modified.

XXI.

Any person dissatisfied with any decision of the local county or district committee shall have the right of appeal to the State Executive Committee and the State Executive Committee shall have the right to determine said issue in accordance with the law and these rules and customs of the party.

XXII.

The chairman and secretary of each county committee shall certify the results of the election for nomination to the United States House of Representatives and transmit the same to the Secretary of the proper district committee at once, except in case of contest, and in case of contest, as soon as the contest before the county committee has been determined; and it shall be the duty of said secretary to present said returns, with proper consolidation thereof, to the district convention herein provided for.

XXIII.

All of the rules for contest as provided in these rules shall be binding upon the county committees and shall be applicable to Congressional candidates, except that certification shall be made from the county committees to the chairman and secretary of the Congressional Committee as herein provided, which shall be laid before the district convention

and such convention shall determine the result of the election in such race in the same manner as contests are determined under these rules by the state convention, when in session.

XXIV.

Entrance fees for candidates for the various offices are assessed as follows:

| | |
|---|------------|
| United States Senator | \$1,500.00 |
| Governor | 1,500.00 |
| Lieutenant Governor | 1,000.00 |
| Justices of the Supreme Court and Judges of the Court of Appeals | 750.00 |
| Public Service Commissioners | 750.00 |
| Secretary of State | 750.00 |
| Comptroller General | 750.00 |
| Commissioner of Agriculture | 750.00 |
| Attorney General | 750.00 |
| Commissioner of Labor | 750.00 |
| Treasurer | 750.00 |
| State School Superintendent | 750.00 |
| United States House of Representatives | 750.00 |
| Judges of the Superior Courts | 500.00 |
| Solicitors General of the Superior Courts | 350.00 |

Candidates for the General Assembly are to be assessed by the Democratic Executive Committee of the Counties in which they are candidates.

Candidates for U. S. Senate, U. S. House of Representatives, and all State House offices, including Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, Judges of the Court of Appeals, Judges and Solicitors General of the Superior Courts, but not including members of the General Assembly, shall pay said fees to the Chairman or Secretary of the State Democratic Executive Committee who shall maintain an office in the State Capitol building, on or before the closing date herein provided for, accompanied by a statement signed by the candidate naming the office for which he enters and pledging himself to abide by the results of the primary. If the office is one for which two or more persons are to be nominated he shall describe the place he seeks by naming the incumbent.

Candidates for the General Assembly of Georgia shall pay their assessments to and qualify with the Chairman or Secretary of the County Democratic Executive Committee in the County where they propose to run.

No other assessments or qualifications shall be required of any candidate except in the case of candidates for Judges and Solicitors of the various Superior Court circuits. The Democratic Executive Committee of any coun-

ty having a population of more than 70,000 may assess an additional fee up to but not to exceed \$2,500.00 against candidates for Judges and Solicitors General of the Superior Courts which must be paid before the name appears on the official ballot.

The fees paid to the Chairman or Secretary of the State Democratic Executive Committee by candidates for Judge and Solicitors of the various Superior Court circuits shall be remitted to the Democratic Executive Committee of the respective counties of each circuit in the proportion that the county unit votes of any particular county bear to the county unit votes of the counties constituting the circuit.

The assessment paid by candidates for United States House of Representatives shall be divided by the Secretary and Chairman of the State Democratic Executive Committee to the various County Committees in the respective Congressional Districts, as provided in the foregoing paragraph.

The Chairman and Secretary of the State Democratic Executive Committee are authorized to make assessments and prescribe qualifications for candidates for any office which might not be provided for by these rules.

The various County Committees or Congressional Committees may fix closing dates for State Senate, House of Representatives, and

the United States House of Representatives, earlier but not later than the one fixed by these rules provided an announcement shall be made by such change in the local newspapers at least ten days prior to the closing date thus fixed. Those previously so fixed are hereby ratified and confirmed.

In the event no candidate is nominated for any office as a result of the Primary election or any nominee dies before the general election, or any vacancy occurs in any nomination for any reason, this Committee shall nominate a candidate, and fill such a vacancy. In the event a Candidate dies between the date of the closing of the entries and the date of the Primary the entries shall reopen for a period of two days, not including the day of the death.

All funds now or hereafter in the hands of the Treasurer of this Committee shall be paid out by him for any expenses in connection with this Committee and for the advancement of the Party only upon the written approval of the Treasurer and Chairman of said Committee, said Treasurer and Chairman being authorized and requested to raise necessary funds and to expend same in their discretion for the promotion and advancement of the Democratic Party.

XXV.

In addition to rules already in force, it is hereby provided County Committees shall

choose their Chairman and Secretary, and all their officers, from members of the Committee. The Committee can be convened at any time by five days' notice by an officer, or by a majority of its members, or as may be provided by rule of the County Committee.

XXVI.

Any person nominated as a Democratic Candidate for membership in the General Assembly of Georgia (Senate or House of Representatives) at a county primary, as authorized by an Act of the General Assembly of Georgia approved February 20, 1956 (Ga. Laws 1956, p. 159) and as amended by an Act of the General Assembly of Georgia approved February 15, 1960 (Ga. Laws 1960, p. 115) which permit, subject to the limitations expressed in said Acts, the nomination of candidates for the General Assembly at county primaries in counties having a population of 115,000 or less, shall be the nominee of the Democratic Party for such office without becoming a candidate at the State primary to be held September 12, 1962, and shall be so certified by the proper officials of the Democratic Party.

XXVII.

The State Democratic Convention is hereby called to meet at ten o'clock A.M., Eastern Standard Time, in the City of Macon, on September 28, 1962, in which Convention each

County shall be entitled to two County unit votes for each representative to which such County is entitled in the lower House of the General Assembly. Said Convention shall canvass the result of said Primary Election in accordance with these rules and nominate candidates in conformity with said results and shall approve the certification of such nominees to the proper officials; select a new State Executive Committee and officers, adopt a platform, and attend to such other business of the party as may be brought before it.

If for any reason a suitable place for holding said Convention in said City of Macon cannot be arranged for or the expenses be too great, the Chairman of the State Executive Committee shall have authority to designate a place for said Convention to be held.

XXVIII.

The County Democratic Executive Committee of each county shall select from among the friends and supporters of the successful candidate for Governor in each county delegates to the State Convention in the ratio of two for each representative to which such county is entitled in the lower House of the General Assembly, with an equal number of alternates. The delegates and their alternates shall be instructed to cast the vote of their county for the candidate for United States Senate, Governor and State House Officers, including Jus-

tices of the Supreme Court and Judges of the Court of Appeals, who carried said county at the primary election as hereinbefore provided. It shall be the duty of the County Chairmen in advance of the Convention to furnish the Secretary of this Committee with the names of the delegates and alternates with written credentials.

XXIX.

The Democratic electors of each county shall elect a County Democratic Executive Committee at the Primary herein provided for, which shall consist of at least one member from each Militia District or each city ward, but the County Executive Committee may, if it deems proper, provide for a larger number. Each such district and city ward shall have equal representation. Suitable blanks shall be left at the foot of the official ballot for the voters to write in the names of the person or persons for whom they desire to vote as members of the County Executive Committee, and the ballots shall indicate the number to be elected from each district or ward. The plurality rule shall govern in determining the election of members of the county committee. The County Executive Committees may require that candidates for the county committee qualify as such candidates, and provide for printing their names on the official ballot: Provided, however, that in every county the election of County Committeemen be left to the County Com-

mittee as to whether or not the Committeemen shall be elected county-wide or by militia districts or wards, in the primary and they shall not be chosen at mass meetings.

The members of the County Executive Committee elected at the primary shall assume office as such on the day following that on which the State Convention hereinbefore provided for is actually held. They shall hold office for a term of four years from that date. No person shall be eligible to election as a member of the County Democratic Executive Committee except bona fide Democratic electors who are registered voters and who pledge themselves to support Democratic nominees of the Democratic Party of Georgia in State elections.

In case any County Committee is not organized and has no rules, after five days' written notice by any member of said County Committee to each member thereof, said Committee shall convene for the purpose of organization and elect a Chairman, Vice-Chairman, Secretary and such other officers as it sees fit. Each County Committee shall make such rules as it sees fit not inconsistent with these rules. All vacancies in the County Committee shall be filled by election by the remaining members of the Committee.

In the event any county fails to elect a County Committee as provided herein, the Chairman of the State Committee is authorized

to name a Committee for such County to serve
for a period of the remainder of the unexpired
term of four years.

[fol. 100]

PLAINTIFFS' EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON FULTON

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, LESLIE J. GAYLORD, who, after being sworn, deposes and says on oath as follows:

Deponent says that her qualifications are as set forth in the affidavits previously filed by her in this case.

Your deponent attaches hereto and makes a part of this affidavit, as Exhibit A, a chart showing 1890, 1910 and 1960 total population figures, and then showing the percentage of unit votes of counties comprising 50% of the population taken in descending order, would have of unit votes available under the county unit rule as it prevailed in 1890, and 1910, and under the Neill Primary Act as it prevails today and under the 547 unit proposal contained in H.B. #1 in Extraordinary Session. Your deponent shows that whereas in 1890, counties having 50.8% of the population had 47.0% [fol. 101] of the unit vote and in 1910, 44.8% of the unit vote, such counties in 1960 have only 18.5% of the unit vote under the Neill Primary Act and would, under the 547 unit proposal, have but 32.2%. Moreover, your deponent shows that said 32.2% applicable to the 547 unit proposal would

be reduced to 31.1% if the calculations were made on the basis of counties having 50% of the population of voting age rather than raw population.

With respect to the 547 unit proposal, your deponent points out that the disparities inherent therein grow by year as population between censuses grow in the larger counties and decline in the smaller ones.

Your deponent attaches as Exhibit B a table showing counties in which negro registration in 1958 (according to the figures obtained from the Secretary of State of the State of Georgia) was less than 10% of the negro population eighteen years old and over in 1960. It is to be noted in connection with Exhibit B that negro registration figures are not available subsequent to 1958 and the closest population by census is, of course, the 1960 census. Exhibit B lists 31 counties (all of which, with the exception of Sumter, are 2-vote counties), in which the percentage of negro registration to negro eligible population is less than 10%. In two of said counties, there was no negro registration. In each of said counties [fol. 102] a vote cast would have an inordinate political power by virtue of the county unit system, which power is as expressed in the "inequality ratio" of said table; said inequality ratio takes as one the average population per 100 votes for the state (state population divided by 410). Therefore, any "inequality ratio" in excess of one shows an advantage to a vote cast in said county in a statewide election under the county unit system.

Further, your deponent says that she has compiled a list showing the population and colored registered voters (as of 1958) and non-white population 18 years and over in 1960, and the resulting percentage of negroes registered to vote in relation to those eligible by age in the 10 largest counties of Georgia in descending order (Fulton through Hall). Said table is attached hereto, marked Exhibit C, and made a part hereof. This Exhibit C shows that in none of said larger counties were the percentages of negroes registered to those eligible by age less than 19% and in some instances, the percentage of eligibles to registered negro voters was as high as 42%.

Your deponent has examined the case of *Gates v. Long*, 113 S.W. 2d 388, and more particularly at 394, wherein is set up the so-called county unit plan of Tennessee, which your deponent understands was invalidated in that case in 1938. That Act provides in its pertinent parts as follows:

"For the purposes of this Act the county unit basis shall mean that the candidate who receives the highest number of popular votes in any given county shall be [fol. 103] considered to have carried such county and shall be entitled to the full county unit vote of such county. Subject to the limitation of the next paragraph, each county shall have as its county unit vote that number of votes, divided by one hundred, which such county in the last general election cast for the party nominee for governor. In such computation a fraction shall be considered one vote.

"The maximum county unit vote of any county, irrespective of total vote cast, shall be one eighth of one per cent of the population of such county according to the latest officially proclaimed Federal Census as of the date of said primary election. In such computation a fraction shall be considered one vote."

This so-called county unit system was an open-end system, that is, so long as the total votes cast for governor in the previous election within a county increased, the units assigned in the subsequent election increased with this limitation, namely, that no county might have a county unit vote greater than $\frac{1}{8}$ th of 1% of the population of the county. This system was absolutely tied to votes cast in said preceding election, but it limited a county's county unit votes only if the votes cast in said election exceeded $\frac{1}{8}$ th of 1% of the county's population. So long as this did not occur, the Tennessee county unit system was almost completely tied to the popular votes cast in the previous said election.

For illustrative purposes only, your deponent has applied the Tennessee unit system 1960 population figures, [fol. 104] as that system would have been applied in Fulton and Echols Counties in elections following 1958 and had

the Tennessee ratios been geared to primaries. This illustration shows:

| County | Pop. | Maximum Unit Votes under Tenn. law | Votes Cast in 1958 | United Votes Assigned Without Regard to 1/8 of 1% limitation |
|--------|---------|---|-----------------------|---|
| Fulton | 556,326 | 695 | 83,265 | 833 |
| Echols | 1,876 | 3 | 588 | 6 |

Said table shows that the Tennessee law as applied in the above circumstances would have given Fulton County 695 unit votes and Echols only 3.

Actually, the Tennessee county unit system would have been more discriminatory to Echols than it would have been to Fulton, in that Fulton lost, under the $\frac{1}{8}$ of 1% limitation, far less a percentage of the unit votes to which it was entitled than did Echols which lost 50% of the unit votes to which it would have otherwise been entitled.

Your deponent has examined the mathematical relationships as set forth in the case of *MacDougall v. Green*, 335 U.S. 281, 93 L. Ed. 3. The facts of that case show that Illinois had 102 counties. To get on the ballot in that state, a party had to obtain a petition of at least 25,000 qualified voters with this further proviso, namely, that within the 25,000, there had to be at least 200 petitioners from at least 50 counties. Your deponent has examined the U. S. census figures for Illinois by counties under the 1940 census (the most recent census prior to 1948, the date of the *MacDougall* case). Comparing those figures with the requirements of the law involved in the *MacDougall* case, your deponent shows that approximately 52% of the population [fol. 105] of the population of Illinois, according to said census, resided in Cook County. She notes that 61% of the signatures needed to qualify the party could be obtained from that population and the remaining 39% were required to be garnered from any 49 of the remaining 101 of Illinois counties. Your deponent shows that only 200 signatures were required to be obtained in each of said remaining 49 counties and that no county in the State of Illinois, according to said census, had less than 5289 persons. Moreover, your deponent says there were at least 49 counties in Illinois having more than 25,000 population. Thus, it was possible for said 200 signatures to be obtained in counties

in which said 200 signatures would have been not less than .8 of 1% of population.

Finally, your deponent shows that if, under the 547 unit vote proposal, there should be a proration of unit votes of a county in proportion to the votes a candidate receives in said county, said proration will not reduce the discrimination implicit in the plan to the extent that the 547 unit vote proposal in any event grants to Fulton County but 53% of an equal ballot and to voters in other counties, many times an equal ballot. Nor can any such proration plan avoid the consequence of the system by which a majority of the population of voting age, taking the counties in descending order of population, will have only a 31.1% of the unit votes. Moreover, if the General Assembly should provide for a proration of unit votes of a county amongst the candidates, but limit this to some circumstances and denying this proration in others, this would only serve to increase the distortion already implicit in the 547 unit vote proposal, as outlined above. This distortion would be particularly discriminatory if the unit votes of the larger counties were prorated and the smaller counties were not, or if the unit votes were prorated in case a candidate did not receive a majority of votes of a county, but were not prorated if some candidate did.

For illustration only, let us suppose an election involving two 5-vote counties, X and Y; with a total of 5,000 votes cast in each county for three candidates, A, B and C. Further suppose that as proposed in the General Assembly Session, there was no proration of the counties' unit votes unless some candidate failed to receive a majority of the popular vote within the county. Thus, it appears from the table below that the combined total vote of candidate A in counties X and Y exactly equalled, under the circumstances assumed, the total vote of candidate B in counties X and Y. But because candidate A got a majority of votes in County X, his combined vote (which is precisely equal to the combined vote of candidate B in the two counties) yield candidate A 7.4 units while candidate B gets 2.5 units. The possibilities of such distortions are almost limitless

under a system which prorates unit votes under some circumstances, but not others:

VOTE DISTRIBUTION

| <u>Candidate</u> | <u>County X Pop. Vote</u> | <u>County Y Pop. Vote</u> | <u>X and Y Combined Votes</u> |
|------------------|-------------------------------|-------------------------------|-----------------------------------|
| A | 2,501 | 2,398 | 4899 (49%) |
| B | 2,400 | 2,499 | 4899 (49%) |
| C | 99 | 113 | 212 (2%) |
| | <hr/> 5,000 | <hr/> 5,000 | <hr/> 10,000 (100%) |

UNIT DISTRIBUTION

| <u>Candidate</u> | <u>Allocation of units without proration</u> | <u>Allocation of units with proration</u> | <u>Total Units of X and Y</u> |
|------------------|--|---|-----------------------------------|
| A | 5 | 2.4 | 7.4 74% |
| B | 0 | 2.5 | 2.5 25% |
| C | 0 | 0.1 | 0.1 1% |
| | <hr/> 5 | <hr/> 5.0 | <hr/> 10.0 100% |

[fol. 107] This affidavit is given for the purpose of being used as evidence in the above case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before me
this 26 day of April, 1962

/s/ FRANCES H. WILLIAMS
Notary Public

Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[SEAL]

EXHIBIT "A"

[fol. 108] COMPARISON OF PERCENT OF TOTAL UNIT VOTE
GOING TO COUNTIES CONTAINING 50% OF POPULATION
LISTED IN DESCENDING ORDER IN SIZE.

| | <u>Number of counties</u> | <u>Population</u> | <u>County Unit Votes</u> | <u>% of Total Population</u> | <u>% of Total Unit Votes</u> |
|-----------------------------|-------------------------------|-------------------|------------------------------|----------------------------------|----------------------------------|
| 1890 | 40 | 933,038 | 172 | 50.8% | 47.0% |
| 1910 | 40 | 1,318,345 | 172 | 50.5 | 44.8 |
| 1960 | 15 | 1,979,054 | 76 | 50.2 | 18.5 |
| 1960— "547 Unit Plan" | 15 | 1,979,054 | 176 | 50.2 | 32.2 |

COUNTIES IN WHICH NEGRO REGISTRATION (1958) WAS
LESS THAN 10% OF NEGRO POPULATION 18 YEARS OLD
AND OVER (1960).

| County | 1960 non- white pop. 18 years old & over | 1958 Negro registra- tion | % Registra- tion to pop- ulation | "Inequal- ity ra- tion |
|------------|---|---------------------------------|--|------------------------------|
| Warren | 2224 | 195 | 9% | 2.61 |
| Talbot | 2507 | 219 | 9 | 2.70 |
| Mitchell | 4971 | 375 | 8 | .98 |
| Worth | 3776 | 296 | 8 | 1.15 |
| Telfair | 2087 | 169 | 8 | 1.64 |
| Sumter | 6710 | 483 | 7 | 1.56 |
| Harris | 3102 | 215 | 7 | 1.72 |
| Toombs | 2444 | 170 | 7 | 1.14 |
| Burke | 6600 | 427 | 6 | .93 |
| Jefferson | 4780 | 264 | 6 | 1.10 |
| Early | 3277 | 205 | 6 | 1.46 |
| Madison | 989 | 55 | 6 | 1.71 |
| Jeff Davis | 909 | 56 | 6 | 2.16 |
| Calhoun | 2393 | 132 | 6 | 2.62 |
| Quitman | 707 | 43 | 6 | 7.91 |
| Echols | 246 | 15 | 6 | 10.25 |
| Charlton | 810 | 40 | 5 | 3.62 |
| Glascock | 351 | 19 | 5 | 7.20 |
| Macon | 4077 | 178 | 4 | 1.46 |
| Bacon | 536 | 22 | 4 | 2.30 |
| Stewart | 2681 | 107 | 4 | 2.61 |
| Bleckley | 1380 | 45 | 3 | 1.99 |
| Treutlen | 968 | 31 | 3 | 3.27 |
| Marion | 1609 | 52 | 3 | 3.51 |
| Fayette | 1190 | 25 | 2 | 2.35 |
| Seminole | 1255 | 29 | 2 | 2.83 |
| Lee | 1795 | 29 | 2 | 3.10 |
| Miller | 946 | 6 | 0 | 2.78 |
| Lincoln | 1336 | 3 | 0 | 3.26 |
| Baker | 1285 | 0 | 0 | 4.23 |
| Webster | 975 | 0 | 0 | 5.92 |

[fol. 109]

PERCENTAGE OF NEGRO REGISTRATION (1958) COMPARED WITH
NON-WHITE POPULATION 18 YEARS OLD AND OVER (1960): TEN
LARGEST COUNTIES.

[fol. 110]

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| <u>County</u> | <u>1960 non- white pop. 18 years old & over</u> | <u>1958 Negro Registra- tion</u> | <u>% Registra- tion to pop- ulation</u> | <u>"Inequal- ity ra- tio"</u> |
|---------------|---|--|---|---------------------------------------|
| Fulton | 117,049 | 28,414 | 24% | .10 |
| DeKalb | 12,407 | 2,153 | 17 | .23 |
| Chatham | 37,563 | 9,250 | 25 | .31 |
| Muscogee | 22,549 | 3,729 | 17 | .36 |
| Bibb | 26,812 | 4,913 | 18 | .41 |
| Richmond | 24,785 | 5,820 | 23 | .43 |
| Cobb | 4,568 | 1,908 | 42 | .51 |
| Daugherty | 14,163 | 2,628 | 19 | .76 |
| Floyd | 5,949 | 1,523 | 26 | .56 |
| Hall | 2,789 | 1,209 | 43 | .77 |

[fol. 111] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 112]

PLAINTIFFS' EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION
No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, JAMES C. BONNER, who, after being duly sworn, deposes and says on oath as follows:

That he is the Professor of History and Chairman of the Department of History and Chairman of Faculty Research at the Woman's College of Georgia, Milledgeville, Georgia, and has been so since 1944 and that his qualifications and educational and professional history are as set forth in Exhibit A, consisting of two pages, attached hereto and made a part of this affidavit.

Your deponent further says that he has specialized in research and study of Georgia history, including political history, for more than twenty years. Your deponent further says in the preparation of this affidavit, he has consulted the conventional and recognized sources for the study and presentation of State history. Your deponent

[fol. 113] says that the following material represents an accumulation of his studies which can be appropriately denominated "Legislative Apportionment and County Unit Voting in Georgia Since 1777" and that the facts set forth in said study included in this affidavit are to the best of his knowledge true and correct and that the opinions expressed therein are those that are truly held by him and are, in his professional opinion, true and correct.

Democracy is a term which is heard so often that we seldom undertake its definition. Leading authorities do not agree upon its exact meaning, yet there is one common denominator in most of these definitions. James Bryce defined it as "a form of government in which the ruling power of the state is legally vested . . . in the members of the community as a whole." While Walter Lippmann says that we must abandon the notion that the people govern, he does include in his definition that the people, by occasionally mobilizing as a majority, do oppose or support those who do rule. Robert M. MacIver says that it is primarily a way of determining who shall govern and to what ends. Others have added the idea that democracy is a way of social life. While the term may have no precise definition and may have various meanings among various peoples at different stages of their development, it is generally accepted by historians to mean a form of government in which the ultimate sovereign power is held by the people and exercised through a system in which the representatives are chosen by a large electorate.¹

In the course of our history, from the Revolution to the present, four cycles of democracy are apparent.² The first [fol. 114] of these was the era of the Revolution itself, the writing of the Declaration of Independence, and the formation of the first state constitutions at a time when the people had first assumed authority. Georgia's original constitution, that of 1777, was framed by a group elected to serve in the legislature and, lacking precedent in procedure, they did not submit the document to the voters for ratification. While its form and philosophy were some-

what British in tone, reflecting ideas with which the people were already familiar, it did make one violent break with the past. It transferred ultimate sovereignty and power from the Crown and the British Parliament to the legislative branch of the new government. This was a legislature of one house to be chosen by an electorate comprised of all adult males who owned property worth £10 or who had a mechanic trade. Eight counties were established at this time to serve the role of political units. The constitution provided for a modified system of borough and shire representation in use in England. Apportionment of representatives was geared closely to population. Liberty County was accorded fourteen representatives, the intermediate counties had ten each, and Glynn and Camden each were allowed only one. In addition, the ports of Savannah and Sunbury were given special representation of four and two representatives respectively, "to represent their trade." Thus, the non-rural-commercial interests of these communities were recognized. This was perhaps the most democratic legislative apportionment in the state's entire history.

This early Georgia legislature, called the House of Assembly, not only did what legislatures normally do today but it did practically everything which any sovereign government does. In addition, it appointed all judges, and [fol. 115] local officials, named the governor, who was little more than their executive secretary, and finally it chose the members of the Executive Council. These members of the Executive Council represented the various counties and those counties which were entitled to 10 or more representatives had 2 councilors. It is interesting to note that the voting procedure of the Council was to ballot by counties rather than by individual members. This is the earliest suggestion of the county unit system of voting which was adopted in primary elections of a later day.

The first phase of democracy came to a close with the formation of the federal constitution of 1787. The conservative elements in the nation had become alarmed by "the democratic excesses" of the states during the depression of 1785-86 when they had passed stay laws, issued

paper money without sound backing and had in other ways shown little respect for property rights. To the upper classes, democracy came to stand for radicalism and mob rule. John Adams riding home from the Continental Congress, was accosted by a countryman who expressed gratitude for Adams' role in extinguishing British courts and justice in the colonies. "I rode along without any answer to this wretch," Adams tells us. "If the power of the country should get into such hands, and there is a great danger that it will, to what purpose have we sacrificed our time? . . ." Later he thought that democracy was committing suicide. "Remember, democracy never lasts long," he stated to an anxious colleague. "It soon wastes, exhausts and murders itself."

The new federal constitution departed drastically from the trend of the state constitutions in setting up a strong executive and in greatly curbing popular control. No single officer in the federal government other than representatives in the lower house of Congress was elected by popular [fol. 116] vote. The president, who was the appointing official, was elected by an indirect system of "state unit" votes which were cast by the electoral college. A state's electors equalled the total number of its senators and representatives in Congress and, while eschewing the idea of a popular vote, the constitution provided that presidential electors be apportioned roughly on the basis of population. States with less than four or five representatives enjoy some advantage over larger states: .

Taking somewhat this pattern of the national constitution as a guide, Georgia in 1789 designed a new organic law which increased the powers of the executive, set up a legislature of two houses with each county comprising a senatorial district entitled to one senator, and a lower house with a representation based on population. Chatham and Wilkes had five representatives each; Burke, Richmond and Liberty, four each; and the remaining counties two each. The House of Representatives nominated the governor and other officials, but the Senate actually elected them from a list of names for each office submitted by the House. Since each county had one senator regardless of

its size; this method of election was another early approximation of the county unit system of holding primary elections similar to that provided by the Neill Act of 1917.

Changes in this constitution occurred in 1795 and again in 1798 when the entire document was almost completely rewritten. The first census (1790) revealed a completely new population pattern. The six up-country counties (Burke, Richmond, Wilkes, Greene, Franklin and Washington) now contained more than 69 per cent of the state's total population. Reapportionment to equalize the political [fol. 117] advantage of up-country counties was the major problem of constitution-makers in this period. The 1795 convention spent most of its time on this problem. The up-country successfully exerted a strong influence to have apportionment in the lower house based more nearly on population. There were now 20 counties. The two largest received four representatives each, seven received three each, and the remaining eleven counties two each.

The up-country won additional victories during the 1790's in having the capital removed to Louisville (and later to Milledgeville) and in changing the method of electing the governor to one which provided for a joint ballot of both houses—a method which gave the up-country a slight edge of votes over the older counties on the coast. In 1798 counties having a population of more than 12,000 were each given four representatives in the lower house, which was the limit accorded any county. A total of four population classifications was established for determining representation. The old rule of allowing each county one senator was retained. The interests of the conservative planter class in both sections were clearly felt and are indicated by the adoption at this time of the federal ratio in determining the population value of a Negro slave as three-fifths of a free person in determining representation. Thus, McIntosh County on the coast, with two and a half times as many slaves as white persons received a political importance out of proportion to its white voters. On the other hand, the three-fifths ratio added little to the political weight of Jackson County where there were four and a half times as many whites as Negroes.

[fol. 118] Despite the three-fifths ratio which favored large slave-holding areas, the Constitution of 1798 embraced a high degree of democracy. The spread of cotton-growing throughout the up-country and the increase of slavery in a wide belt westward from Augusta, following the retreating perimeter of the frontier, soon brought the center of political power to Middle Georgia where it remained throughout the ante-bellum period.

The second cycle of democracy, from the close of the eighteenth century to 1860, was one in which the state governments, highly amendable to the will of the people, played a significant role, and the federal government took only a passive interest. This phase might be said to have begun with Thomas Jefferson's inauguration in 1801 and to have reached its peak in the period of Jacksonian democracy in the 1830's. This "age of the common man," was manifested in Georgia as early as 1824 when this state became the first of the Southern states to adopt an amendment making the governor elective by statewide popular vote.⁹ Previously, the governor's power was greatly increased, and property qualifications for voters were completely eliminated. There was now a security clause for honest debtors, a ban on the further importation of slaves from Africa, and a basic humane principle in the slave code which gave to the Negro the same protection of life and limb as that accorded to white citizens.⁹

After the Sixth Census, in 1831, a new legislative apportionment took cognizance of population changes and created four classifications of counties for legislative representation in the lower house. The three most populous counties [fol. 119] —Hall, Monroe, and Gwinnett—each were accorded four members. Twenty-four counties in the next category were given three members. Thirty-one counties in the third classification each had two members and the remaining 32 counties had one each.¹⁰ This was with little doubt the fairest legislative apportionment which the state was to have within the next 130 years.

The rapid growth of the state and the creation of many new counties in the area recently ceded by the Cherokees created a large and unwieldy legislature. As a result, in

1843, an amendment was passed to reduce the size of the General Assembly. The number of senators was cut almost in half by creating for the first time 47 senatorial districts each comprised of two contiguous counties (except the First District which comprised only of Chatham County). Each district was to have one senator. In the House the 37 largest counties each were given two members and the remaining 56 counties one each. The total number of representatives was fixed at 130.¹¹ To provide for new counties another amendment, effective in 1851, dropped the fixed number of representatives. In the following year the senatorial districts were abolished and the old system of allowing one senator for each county was restored.¹² Thus, geography as a basis for representation was emphasized rather than population, and the problem of apportionment was overshadowed by the need to restrict the size of the General Assembly.

The problem of restricting the size of the General Assembly continued to plague law-makers. From 1850 to 1858, a total of 38 new counties were created (including Fulton, which was cut off from DeKalb in 1853). The Constitution of 1861 accordingly restored the senatorial districts which now numbered forty-four. Each senatorial [fol. 120] district was now comprised of three contiguous counties instead of two, which reduced the size of the senate by two-thirds. Apportionment in the lower house remained as in 1843, with only two population categories recognized.¹³ This was the system of apportionment that was not changed until the period of military reconstruction in 1868.

At this point, about 1860, began the third cycle of democracy. It is characterized by the federal government for the first time assuming a dominant role which it has never since yielded.¹⁴ However, it should be noted that it was Congress which exercised the controlling influence. The Civil War brought an end to federalism and ushered in the present stage of nationalism. Most of the Southern states, including Georgia, have opposed the democratic tendencies of the nationalistic age on old theories which are grounded in the pre-Civil War ideas of federalism.

Georgia's constitutional convention of 1865 did what it was necessary to do to bring Georgia in line with changed political, social and economic conditions following the war, including the abolition of slavery, but it did nothing to change the unrealistic two-class system of legislative apportionment which it had used since 1843.¹⁴

It was the advent of military reconstruction in March, 1867, which brought congressional influence to play upon the constitution of Georgia. However subversive of the normal democratic process which these acts of reconstruction carried out by the military authorities may have been, a fact often overlooked is that they provided for a higher degree of democracy than had existed previous to about 1830, or perhaps even much earlier. The "democratic excesses" of this period involved Negro suffrage under carpet-[fol. 121] bag tutelage. It was this fact which disrupted violently the normal and orderly process of democratic evolution in the South. This also provided the springboard for a conservative reaction after the restoration of Home Rule, the results of which were to remain in evidence for almost a full century.

General John Pope who commanded the Third Military District of which Georgia was a part, set up in each of the 44 senatorial districts a board of registrars comprised of one Negro and two white men. Late in the summer of 1867 these boards proceeded to register a new set of voters—which included the negroes—in compliance with an act of Congress passed on July 19. To promote a large registration the boards were allowed twenty-six cents for each name recorded. Negroes were rounded up and registered, some under different names and many were enrolled more than once. In August, some South Carolina blacks were registered. Conversely, some seven to ten thousand white men were refused registration under the existing rules which barred the old political leadership. In Baldwin County the colored registration was 6,635, while only 2,608 whites were enrolled. In the state at large, however, white registration barely exceeded that of the negroes.¹⁵

Pope issued General Order No. 69 which declared each of the 44 senatorial districts a voting unit, rather than the

county as had always been the custom. Of great significance is the fact that the order confirmed eight classifications of these election units. To the First District (Chatham, Bryan and Effingham counties) was apportioned eight delegates. To the eighteenth (Richmond, Glascock and Jefferson) he permitted seven delegates, and to the twentieth (Baldwin, Hancock and Wilkinson), six. Thirteen other districts were allotted five each; five others were [fol. 122] permitted four each; ten were given three each; seven were given two each; and the remaining four each were allowed only one delegate.¹⁶

Since this apportionment was designed roughly on a population basis, it appears at first glance to have been the most equitable representative apportionment ever used in Georgia for such purposes. However, there had been marked population shifts since the last census, in 1860, and this apportionment seems to have been based either upon total registration figures, or upon estimated population changes rather than upon the official population figures for 1860. On the basis of these figures, the First District with eight delegates had a population of 2,500 less than the Twenty-second District (Bibb, Monroe and Pike) which was accorded only seven. The Fourth District (Glynn, Camden and Charlton) had a population of 11,089 and was allotted one delegate, while the Fortieth District (Union, Towns, and Rabun), with a population of 10,143 was allotted two. The Twentieth District (Baldwin, Hancock and Wilkinson) was given six delegates which represented a population of 33,820, while the five delegates permitted the Thirty-Sixth District (Meriwether, Coweta and Campbell) represented an 1860 population of 38,334.

The foregoing arrangement provoked a Milledgeville editor to charge that this procedure was rigged in order to make the vote of white men "63 per cent less valuable than the negro vote."¹⁷ While this author has found no justification for such a claim, there is ample evidence of considerable arbitrariness in subsequent procedures leading to the final adoption of the Constitution of 1868.

For one thing, the voting on the convention itself and the election of delegates was to be held for three days;

[fol. 123] from October 29th to the 31st, inclusive. A convenient order issued at a later date allowed men to vote in counties other than where they were registered, thus increasing the possibilities of plural voting by the floating Negro population. Seeing the inevitability of the results or else hoping to thwart the plans of the reconstructionists by casting less than a majority of the total number of registered voters, many whites defaulted on their franchise. Only seven white citizens voted in Baldwin County, three in McIntosh, and one in Jefferson. However, such defaulting of the franchise in the end proved to be of no purpose.¹⁸

The general features of this convention and the constitution which was approved in 1868 are better remembered for certain stigmas attached to them than for their democratic achievements. Actually the constitution was a credit to the ideal of a growing and expanding democracy. Such anachronisms as lotteries and imprisonment for debt were abolished. Married women were given complete control of their own property. Negroes were given the ballot and no white men were disfranchised. Legislative apportionment left the 44 senatorial districts unchanged, while the apportionment of representatives in the lower house was based on a new "three class system" which remains today except for slight modifications made in 1877 and in 1920. This apportionment gave to each of the six largest counties three representatives. The next 31 largest counties each were allotted two, and the remaining 95 were given one each. It provided that this apportionment might be altered after each census period, but the aggregate number of representatives was to remain at 175.¹⁹

[fol. 124] A close analysis of this apportionment indicates that it was a fairer basis than any which had existed since 1843 and perhaps equal to that which had been inaugurated during the first cycle of democracy immediately following the Declaration of Independence. The six largest counties, in descending order, were Chatham, Richmond, Burke, Bibb, Muscogee and Troup. Of this group, only Chatham (population 31,043) had a population in excess of 21,284 (the population of Richmond County, the second largest). The re-

maining four counties in this group had a population between 16,000 and 17,291. The 31 counties in the second classification had a population range from 15,953 to 10,146, and the 95 counties in the third classification ranged in size from 10,125 to 1,316. Fulton County at this time was in the second category with 14,427 people (according to the 1860 census). The least populous county was Colquitt (population 1,316). The most populous county in the third classification was Putnam (population 10,125). Colquitt enjoyed only a 1 to 7.60 ratio in representation over Putnam County (based on the 1860 census). Between the largest county (Chatham) and the smallest county (Colquitt) the ratio was only 1 to 7.86. Numerous inequalities were found among the 95 rural counties, but these were not great and of no unusual significance. There was no significant disparity in voting power at this time between rural and urban communities. The rise of very large urban centers in Georgia awaited the passing of three or four decades.

As already indicated, the great liability of the Constitution of 1868 was not the result of its democratic features as its stigma of having been born of military reconstruction. [fol. 125] Only two or three significant features of this story need to be related here. When the delegates to the Convention of December, 1867, were elected, thirty-one were Negroes and a few were northern-born adventurers.²⁰ Because Milledgeville's hotels and inns refused to accommodate the Negro delegates, General Pope ordered the convention to meet in Atlanta within earshot of his own headquarters and where appropriate accommodations for the Negro delegates could be obtained. When the constitution was completed early in the following year it contained a clause which made Atlanta the new seat of government. Attempts by the people of Milledgeville and their friends throughout southern and middle Georgia to have the Fortieth Congress disallow this provisions were of no avail. Highly significant, however, are the statements of Henry P. Farrow, soon to become the state's attorney general in the Bulloch regime, who went to Washington to argue in favor of the removal clause. He called the friends of Milledgeville "aristocratic and fossiliferous" and "the most ultra and

uncompromising enemies of Reconstruction." "Old fogies must give place to young America," he stated. He claimed that there were 100 colored freeholders in Atlanta to one in Milledgeville, and he described the former city as young, thriving, and beautiful, with its face set toward the future rather than the past.²¹ On the contrary, one of Atlanta's rural critics at this time observed that "Atlanta is scarcely more of a Georgia city than a Tennessee, Ohio, or European city. Its faith is in itself . . . It feeds on Georgia and the rest of mankind . . . Self-seeking is the inspiration for its tremendous energies. She wants the Capitol for the profit that is in it."²²

[fol. 126] Rural Georgians were soon to discover other arguments to support their prejudices against urban ways. These arguments were largely a result of one special feature which the Constitution of 1868 contained—a provision which made corruption tempting to those in control. This was a clause permitting the state and local divisions to aid with public funds, railroads and other similar enterprises. Under Governor Bulloch and the radicals, state bonds were secured illegally such public securities were marketed without rendering an account. The state-owned W & A Railroad was plundered, and governmental expenses soared skyward. Atlanta business men and Atlanta-based politicians were prominent in these transactions representing an unholy alliance between government officials and a rising new class of business men.²³ It was natural that much of this onus of the Reconstruction period should have clung to a prosperous and rapidly-growing community, particularly in other communities still suffering the aftermath of war's destruction. Atlanta soared from thirteenth in rank in 1860 to first in 1880, by which date it had surpassed Savannah as Georgia's largest city. In the eighty-odd years which have elapsed since, Fulton County has outgrown its closest rival by more than two to one. It stands ahead of the eighth ranking county in the first classification by more than seven to one. Lawmakers from rural counties have not felt a strong compulsion to adjust the political balance in Atlanta's favor. After all, they might reason, the existing apportionment system was one which the reconstructionists had designed in Atlanta.

In 1877, after the departure of federal troops from the South and restoration of Home Rule, there emerged the [fol. 127] fourth constitution since the secession of Georgia from the Union in 1861. Delegates to this convention were apportioned to the 44 senatorial districts which were divided into nine classifications, almost identical to the plan imposed by General Pope a decade earlier. The Thirty-fifth District, comprised of Fulton, Cobb and Clayton counties, was awarded nine delegates; and the First District, in which Chatham County fell, was awarded eight. Among the lowest category was the Fifteenth District which received one delegate.²⁴

The local procedure which was followed in the naming of delegates to this convention is highly significant. This procedure set the pattern for the Democratic primary system, for Negro disfranchisement, and also for the county unit system of determining the results of primary elections which evolved throughout the next three decades. In most of the counties throughout southern and middle Georgia, Senatorial District Democratic Executive Committees were formed by the white electors. These county executive committees generally are comprised of one person from each militia district. The senatorial committees allocated delegates to the Constitutional convention by counties somewhat on a population basis. In the first district, Chatham was allotted six, and Bryan and Effingham one each. In the Twentieth District, Baldwin, Hancock and Washington each were given two. In the Thirteenth District, Sumter, Macon and Schley counties were apportioned three, two and one, respectively.²⁵

The nominating procedure used in Baldwin County was somewhat typical of that followed elsewhere. A mass meeting was called for May 1, more than a month before the date set for the general election on June 12. At this county meeting of white Democrats a total of 449 votes were [fol. 128] cast for five candidates; the two highest being named to represent the county in the forthcoming constitutional convention. Subsequently, on May 23rd, the Twentieth Senatorial District Executive Committee, comprised of one delegate from each militia district in the three

counties, met at Sparta, in Hancock County, and confirmed the nominations made in each of the three counties comprising the district. The committee then issued a statement urging "all Democrats," without any reference to race, to support the ticket at the general election on June 12. All of the nominees were overwhelmingly elected in the general election.²⁶

The convention which assembled in Atlanta on July 11, 1877, was one in which white men of the old conservative leadership dominated. Of the 194 delegates, ten were or had been U. S. congressmen, 17 were judges and one was an ex-governor. Negroes and Republicans were conspicuous by their absence.²⁷ The principal feature of the constitution which they framed was a hodge-podge collection of statutory laws rather than a body of fundamental principles. Under the guidance of Robert Toombs, a spokesman for the conservative agrarian element, the power of taxation was curbed, and extreme limitations were placed upon the public debt. These and other features made it a strictly conservative document; inconsistent with the state's potential for industrial and urban growth. The legislative apportionment system, however, was left almost unchanged from that which was begun under the reconstructionists. The number of first-class counties remained at six, with each entitled to three representatives. The number of second-class counties with two representatives each was reduced from 31 to twenty-six, and there were now 105 counties entitled to only one representative each.²⁸ Geared to the population figures [fol. 129] of the 1870 census, this arrangement, with a total representation in the lower house of 175, was relatively an even-handed apportionment.

It is a well-known fact that Negroes voted in Georgia from 1868 until their temporary disfranchisement in 1908, although their presence at the polls in considerable numbers during this period often was spasmodic. The unofficial white primary of this period had proved effective in reducing the size of their vote only so long as white men had stood firmly within the Democratic party. A split into violent factions occurred in the 1890's with the rise of the

Populist Party under Thomas E. Watson. During this period Democrats as well as Populists sought the Negro vote. In many instances it proved to be the margin between victory and defeat. At times this situation threatened to encourage the revival in Georgia of the Republican party which had become largely dormant after Reconstruction.²⁹

Negro disfranchisement was a feature of Hoke Smith's platform in his gubernatorial contest against Clark Howell in 1906. This was a result of Watson's support of Smith's candidacy. The disfranchisement amendment which was passed in 1908, known as the "grandfather's law," added to existing qualifications for voter registration certain requirements which were difficult for Negroes to meet. At the same time it was possible for most illiterate and propertyless white men to qualify under a clause enabling one to register if he were a veteran or even a lawful descendant of a veteran.³⁰

Even before this amendment was passed, however, the Negro vote had been brought under practical control by the primary system and by dishonest manipulation of registration and voting machinery which developed in an extra-legal fashion in the three decades following 1877. By 1904 Tom Watson was able to observe that the Negro had been disfranchised in nearly every state in the South except Georgia and there he had been "white primaried."³¹ On the passage of the 1908 amendment, a constitutional historian wrote that "the political equality of the Negro [in Georgia] is becoming as extinct in law as it has long been in fact, and the undoing of political reconstruction is nearing an end."³²

Between 1877 and 1886 various methods were used to select delegates to state conventions of political parties, including mass meetings in county court houses, county conventions by militia districts, or simply by appointment by county executive committees. Few were chosen by popular vote of the people. In the race for the Democratic nomination of 1866 between John B. Gordon and A. O. Bacon for governor, it is estimated that about half the counties used the primary instead of the less formal methods to

select delegates for the state convention. In this election Henry W. Grady, editor of the *Atlanta Constitution*, managed Gordon's campaign. He correctly surmised that he could offset the advantage which Bacon held in the party organization by appealing directly to the people to rebel against the political machine of the party and to elect their own delegates to the state convention. This came to be called the direct primary.³³

In the following year the primary was given official recognition by a legislative statute which prohibited liquor at polling places during an election. In subsequent years other statutory regulations were prescribed but they were not always made mandatory. In 1908 a requirement was [fol. 131] made that primaries for the nomination of state officers be held on the same date in all counties. Yet the primary was still governed largely by custom and party rules. In the meantime, in 1898, the Democratic party required for the first time that primaries be used in selecting delegates to the state convention. Delegates to the state convention came to be chosen from among the friends of the gubernatorial candidate receiving the largest popular vote in the county.³⁴

The county unit rule was used from the beginning except in the primary of 1908 when Governor Hoke Smith, a candidate for a second term, favored nomination by a state-wide popular vote. Clark Howell, Grady's successor as editor of the *Atlanta Constitution* and a political enemy of Smith, previously had stated that "If this rule is ever once established in Georgia, it means that every country county in this state becomes a *way station on the political road*." Rural voters caught his message and they became excited over the issue. This decision to revert to the popular vote proved injudicious for Smith, for Joseph M. Brown was victorious by a margin of more than 10,000 votes.³⁵

Reverting to the county unit system after the 1908 campaign, this system has since remained intact but largely under party rules until 1917. At that time it was officially established by the General Assembly as part of the state's election laws under the Neill Primary Act. This act stipu-

lates that the party nomination of U. S. Senators, governor, statehouse officers and justices of the Supreme Court and the Court of Appeals be by primaries according to the unit plan. Plurality in the county would give the candidate all of the county's unit votes. The governor and the senator [fol. 132] were required to receive a majority of all the county unit votes for nomination. Each county was given a unit vote equal to twice the number of representatives it had in the lower house of the General Assembly.³⁶ This made it possible to split conveniently the county unit vote in these rare instances where the popular vote might be equally divided.

The Neill Primary Act was first introduced and passed by the General Assembly in 1916. Governor Nat E. Harris vetoed the act ostensibly because he considered a second primary, for which it provided, an unnecessary expense to the candidates. The *Atlanta Constitution*, however, claimed that the governor vetoed the law because its enactment would decrease his chances for renomination.³⁷ The reintroduction of the act in 1917 was propitious because that was an off-year for elections. Of the numerous newspapers throughout the state who opposed the measure, the *Atlanta Journal* was perhaps the most convincing in its arguments. The *Constitution* favored the county unit plan principally because it would "eliminate convention juggling and trading which always results when no candidate for a state office receives a majority in a primary election."³⁸

In a series of editorials the *Journal* called the law "contrary to the basic principles of popular government." It cited the laws potential for "political jugglery in which the will of the people can be thwarted." Under the county unit system it was possible for a handful of voters in one county to nullify the ballots of thousands of voters in other counties. It termed county unit votes "political blocks representing nothing as regards the will of the state as a whole." A recent election was cited in which Appling and Baker Counties, each with two unit votes, cast 1591 and 373 votes [fol. 133] respectively. Yet the latter counted just as much as the former.³⁹

If five hundred men vote in one county for Governor or any other State official, every one of them is entitled to have his ballot credited; and if a thousand men vote in another county, every one of them is entitled to have his vote credited. But this is just what the County Unit System does not do. The County Unit system virtually throws out the ballots of half the voters in the second county; it virtually disfranchises them. It treats them not as citizens . . . but as so many ciphers to the right of a decimal-point . . .

The fact that the county unit system had been adopted from year to year by Democratic Executive Committees did not alter the fact of its inherent injustice, the *Journal* claimed. "Not until it is true to say that two is as much as four, and not until it is honest to give only eight ounces for a pound and only fifty cents for a dollar, can the County Unit system be anything but deception and fraud." 40

The relationship of the county unit system at this time to Negro disfranchisement was seldom openly discussed either by newspaper editors or by legislators. One possible reason why the newspapers which opposed the law did not discuss its effect upon Negro voting was that the injection of this issue at that particular time, when the Negro was not a voter, would have served no good purpose. Instead it would prejudice many white voters in favor of the law. However, certain personal correspondence of this period does suggest that lawmakers were fully aware of the significance which the county unit system held in relation to white political supremacy.

Typical of these comments is one made by L. J. McConnell of Royston, on July 27, 1917. He wrote that probably the worst feature of the system was the practical disfranchisement of all minority voters in each county. Their votes [fol. 134] would not, said he, be permitted "to be joined to and combined with like votes in counties which they carry." He pointed out that half of Elbert County's two representatives (and its four unit votes) resulted from her Negro population. 41

When the county unit system was officially adopted into law, in 1917, the grandfather's amendment of 1908 had been inoperative for more than two years (since January 1, 1915). It was clear to most political-minded men that such a device as the county unit system was needed if the re-appearance at some time in the future of large numbers of Negro voters was to be prevented.

Negroes did not vote in Democratic primary elections in Georgia under the Neill Act until 1946, when the first gubernatorial primary was held after the *Smith vs. Allwright* decision (in 1944) and the *Primus King* case (1945).

The most important requirements for voter qualification provided in the Constitution of Georgia in 1946 were literacy, good character, and understanding the duties of citizenship. However, there were no detailed instructions for applying these tests. Up to this time few voters had been challenged and no precedent existed for purging registration lists. Under such conditions procedures varied from county to county and registrars enjoyed wide discretion. Sometimes the burden of proof was placed upon those challenged and at others upon the challenger. The failure of Negroes to appear at the hearings when summoned resulted in numerous disqualifications by default. For those who did appear, the constitutional tests were applied in a variety of ways which eliminated many others.⁴²

Because of the operation of the county unit system, these decisions in individual counties were vitally important in [fol.135] the outcome of the 1946 election, which was between Eugene Talmadge and James V. Carmichael. There was a situation not unlike that of the 1880's when each side sought to manipulate the Negro vote in its own favor. Pro-Talmadge registrars (whose candidate stood for white supremacy) purged Negroes in large numbers. Carmichael partisans used their discretion to favor the challenged Negroes.⁴³ The election resulted in Carmichael receiving 7,644 more popular votes than Talmadge, but the latter won the nomination by capturing a great majority of the county unit votes.

One of the more significant aspects of the recent history of the county unit system is an attempt by its partisans,

on two occasions, to extend the use of the system. Both being in the form of constitutional amendments, they were subjected to popular vote and were defeated. The 1949 proposed amendment to extend the county unit system to general elections was defeated by a popular vote of 164,337 to 134,290. The 1951 proposed amendment to require all political parties to use the county unit system in primaries was defeated in the following year by a popular vote of 309,170 to 279,882.⁴⁴ Thus, the only occasions in which the people have had an opportunity to express themselves on this issue, they have indicated a substantial disapproval.

The presentation of the county unit issue by Georgia newspapers from 1945 to 1960 has been the subject of a detailed scholarly study.⁴⁵ This research shows that those papers which emphasized the implications of Negro disfranchisement in this issue were of the classification known as political organs. While such papers as the two Atlanta dailies, the *Macon Telegraph*, and the *Columbus Ledger* [fol. 136] *Enquirer* maintained a dignified approach with only a rare reference to racial implications, *The Statesman* and the *Augusta Courier* followed the opposite approach. "Voting the Negroes, the pink, the cranks, the radicals, the C.I.O. and other such groups in a block," said the *Courier*, "the Atlanta Ring would be able to dominate the state-wide elections without the county unit system." "Justice William O. Douglas was quoted by the same paper as saying, "If the Georgia county unit system is permissible state practice, it will come to replace the white primary as the instrument of Negro disfranchisement."⁴⁶ Only slightly more less violent in its choice of phraseology was *The Statesman* which held that the county unit system was a bulwark against the "bloc vote," "race mixing," and a guarantee of "the Southern way of life."

Illustrative of the fact that the county unit system does commit a gross travesty upon the democratic process and not entirely or completely related to the question of race, is the story of Georgia elections from 1920 to 1960. There has been one instance in Georgia where the candidate won the Democratic Party's nomination by the county unit vote when he did not also win the popular vote. This was the

Talmadge-Carmichael contest of 1946 already described. One instance in which a U. S. senator was elected by less than a majority of the popular vote was in 1938 when Walter F. George, running against three opponents, received 242 unit votes out of a total of 410, yet polled only 141,235 popular votes out of a total of 321,311 cast. In 1946, with six candidates in the race for lieutenant-governor, Melvin Thompson won with 192 unit votes, although he [fol. 137] received less than 30 per cent of the total popular vote.²⁸ In 1934 and again in 1940 Tom Linder won the office of commissioner of agriculture with less than half of the popular vote. In all of these instances, nomination by the Democratic primary was tantamount to election. In only one of the elections cited above, that of 1946, did Negroes vote in appreciable numbers.

While there was in 1920 disparity in representation between rural and urban counties, and hence in their voting power, disparity in some degree had been evident in legislative apportionment since 1843 at which time it was necessary to reduce the size of the General Assembly to reasonable limits. Moreover, significant and far-reaching changes have occurred since 1920 in the state's economic pattern. These changes have wrought violent shifts of population from rural areas to urban centers.

The peak in the rural population of Georgia was reached in 1920, immediately after which it began to decline and has steadily decreased since. The eight least populous counties in 1920 had a total population of 31,445, while in 1960 this figure had declined to 24,320. At the same time the total population of Georgia increased more than one million. During the same forty-year period the eight counties in the first classification increased from slightly over 400,000 inhabitants to 1,626,734. In 1920 each representative from the eight smallest counties represented less than 4,000 people, while that from the eight largest counties represented 16,666 people. The ratio between the smallest group and the largest group was 1 to 4.24. By 1960 this ratio had increased to 1 to 22.29. The ratio in 1920 between Fulton, the largest county, and Echols, the smallest county, was only 1 to 16.33. By 1960 this ratio had increased to

[fol. 138] 1 to 98.84.^o The above ratios, it should be emphasized, are applicable not only to legislative representation, but also to primary elections under the county unit system established by the Neill Act of 1917. Thus, we have a double-edged sword, growing sharper and more subversive of the democratic ideal throughout the changing times.

By 1960 a considerable proportion of Georgia's large urban communities were Negroes. Now freed from the isolation and conservatism of their former rural environment, they had learned to register under existing qualifications, and to vote. Georgia was reported as having the second largest number of registered Negro voters among the eleven Southern states. While Negroes represented 29 per cent of the total voting-age population of the state, they were still only 12 per cent of the total voter registration. However, this 12 per cent was heavily concentrated in the larger urban centers. The highest registrations of Negroes were in Fulton, Bibb, Richmond and Muscogee counties. With the exception of those in Liberty and McIntosh and several other counties, rural Negroes remained substantially unregistered in 1950. These facts had a considerable bearing upon the determination of rural law-makers to main the county unit system. Complicating the problem of adjustment within the democratic framework was the fact that these same law-makers had the power under the state's legislative apportionment system to deny the people an opportunity to exercise their choice on this matter through failure to submit the entire matter to popular vote.

Before the Civil War, Georgians enjoyed a healthy two-party system, when Whigs and Democrats vied on equal terms for the loyalty of voters. In the four presidential [fol. 139] elections between 1840 and 1852, for example, Georgia's majority changed four times and on each occasion her margin of votes was highly significant to the victorious candidate. In 1840, Georgians gave this majority to the Whig candidate, Harrison. In 1844 they voted for the Democrat, James T. Polk. In 1848 they did a backward somersault and voted again for the Whig, Zachary Taylor, whose "northern principles" did not seem greatly to disturb them. In the 1852 election, Georgia's vote went again to the

Democratic column. Significantly, it was during this period that Georgians held high positions in the Federal administration.

The Whig party went into demise after the 1852 election after which it lost its Southern following over delicate sectional issues. The Republican party, formed in 1854 filled the void left by the Whigs but it did not become a party with a national following until after the Civil War. In several Southern states its development was delayed and complicated by reconstruction.

Georgia has been a one-party state since the removal of federal troops in 1871. Few Republicans have held office in the state since this time. None but Democrats have held a state office since the 1890 decade, after which period this party has been completely in control of statewide elections.

In this paper three cycles of American democracy have been delineated. The fourth and current cycle, beginning in the first quarter of the twentieth century, has been one in which the executive and the judicial branches of the federal government have joined the legislative branch as co-leaders in the movement. This new cycle in the development of American democracy involves social, economic and civil, as well as political rights.

[fol. 140]

FOOTNOTES

¹ Hillman M. Bishop and Samuel Hendel (eds.), *Basic Issues of American Democracy: A Book of Readings* (New York, 1948), 14-18.

² See Fletcher M. Green, "Cycles of American Democracy," *Mississippi Valley Historical Review*, XLVIII (June, 1961), 4.

³ See the Constitution of 1877 in Horatio Marbury and William H. Crawford, *Digest of the Laws of Georgia . . . 1755 to . . . 1800* (Savannah, 1802), 6 *et passim*.

⁴ Quoted in Samuel E. Morison and Henry S. Commager, *The Growth of the American Republic* (New York, 1942), 199.

⁵ Morris L. Ernst, *The Ultimate Power* (Garden City, N.Y., 1937), 70.

⁶ See Marbury and Crawford, *op. cit.*, 14.

⁷ *Ibid.*, 16 *et passim*; See also Jean A. Garrett, Amendments and Proposed Amendments to the Constitution of 1798 (M.A. thesis, University of Georgia, 1944), 1 *et passim*. All statistics used in this paper in reference to population are taken from the official abstracts of the Federal Census, published by the U. S. government in the years immediately following each census.

⁸ See Arthur Foster, *A Digest of the Laws of the State of Georgia* (Philadelphia, 1831), 368; *Acts of the General Assembly . . . 1824* (Milledgeville, 1825), 41.

⁹ See for example the slave code of this period in Augustin S. Clayton, *A Compilation of the Laws of the State of Georgia . . . 1800 to . . . 1810* (Augusta, 1812), 39, 289.

¹⁰ Arthur Foster, *A Digest of the Laws of the State of Georgia*, 102.

¹¹ *Acts of the General Assembly . . . 1843* (Milledgeville, 1843), 17, 18.

¹² *Acts of the General Assembly . . . 1851-1852* (Macon, 1852), 48, 49.

¹³ See the Constitution of 1861 in Walter McElreath, *A Treatise on the Constitution of Georgia* (Atlanta, 1912).

¹⁴ *Ibid.*

¹⁵ The most scholarly and authoritative work on Reconstruction in Georgia is C. Mildred Thompson, *Reconstruction in Georgia . . . 1865-1872* (New York, 1915). See pages 285-287.

¹⁶ This order and all others involving such matters was published in various newspapers throughout the state during this period. See for example, *The Union and Recorder* (Milledgeville), March 27, 1877.

[fol. 141] ¹⁷ *Federal Union* (Milledgeville), Nov. 12, 1867.

¹⁸ Isaac W. Avery, *The History of the State of Georgia, 1850-1881* (New York, 1881), 373; C. Mildred Thompson, *op. cit.* 188.

¹⁹ Walter McElreath, *op. cit.*

²⁰ *Federal Union*, Nov. 19, 1867.

²¹ See "Memorial to Fortieth Congress" in Records of the Commissioners of Milledgeville, 1855-1876 (July, 1868), 336, *passim*. For Farrow's reply see *ibid.*, 340 *passim*.

²² *Union and Recorder*, May 29, 1877.

²³ The best description of the state's economic history during this period is found in C. Mildred Thompson, *op. cit.*, 226-254.

²⁴ *Journal of the Constitutional Convention of the People of Georgia . . . 1877* (Atlanta, 1877), 641-651.

²⁵ *Union and Recorder*, May 29, 1877, April 3, 1877.

²⁶ *Journal of the Constitutional Convention of the People of Georgia* . . . 1877, 641, *passim*; *Union and Recorder*, May 1, 1877, May 29, 1877, June 12, 1877.

²⁷ Avery, *op. cit.* 529.

²⁸ *Ibid.*, 529; See also *Journal of the Constitutional Convention of the People of Georgia*, 1, *passim*; Albert B. Saye, *A Constitutional History of Georgia, 1732-1945* (Athens, 1948), 279-309.

²⁹ See C. Vann Woodward, *Tom Watson, Agrarian Rebel* (New York, 1938); Mrs. William H. Felton, *My Memoirs of Georgia Politics* (Atlanta, 1911), 654-678.

³⁰ Dewey W. Grantham, Jr., *Hoke Smith and the Politics of the New South* (Baton Rouge, 1958), 143.

³¹ *Atlanta News*, Sept. 2, 1904. Quoted in Woodward, *op. cit.*, 370-371.

³² William A. Dunning, "The Undoing of Reconstruction" in *Essays on the Civil War and Reconstruction and Related Topics* (New York, 1931), 383.

³³ Albert B. Saye, *op. cit.*, 183; Lynwood B. Holland, *The Direct Primary in Georgia* (Urbana, 1949), 26-27.

³⁴ Albert B. Saye, *op. cit.*, 183, *passim*.

³⁵ *Ibid.*; Grantham, *op. cit.*, 191.

³⁶ *Georgia Laws*, 1917, 183 ff.

[fol. 142] ³⁷ *House Journal*, 1916, 1291-1293; L. L. Knight, *Georgia and Georgians*, II, 1205.

³⁸ *Atlanta Constitution*, July 24, 1917.

³⁹ *Atlanta Journal*, July 25, 1917, July 27, 1917.

⁴⁰ *Ibid.*, July 27, 1917.

⁴¹ Quoted in *Ibid.*, July 27, 1917.

⁴² Joseph L. Bernd and Lynwood Holland, "Recent Restrictions Upon Negro Suffrage: The Case of Georgia," *The Journal of Politics*, XXI (1959), 488-489.

⁴³ *Ibid.*, 508.

⁴⁴ *Georgia Laws*, 1949, 528; 1951, 101.

⁴⁵ Marian Van Landingham, *The Presentation of the County Unit System Issue by Representative Georgia Newspapers from 1945 to 1960* (an unpublished M.A. thesis, Emory University, 1960).

⁴⁶ *Augusta Courier*, May 1, 1950.

⁴⁷ *Ibid.*, May 8, 1950.

⁴⁸ Albert B. Saye, *The Government and History of Georgia* (Athens, 1956), 237, *passim*.

⁴⁹ The rural population of Georgia in 1920 was 2,895,832. By 1930 it had decreased to 2,012,014. *Abstract of the Fourteenth Census*, 1920 (Washington, 1923), 588; *Abstract of the Fifteenth Census*, 1930 (Washington, 1933), 19.

[fol. 143] This affidavit is given for use in the captioned case.

/s/ JAMES C. BONNER

Sworn to and subscribed before me
this 25th day of April, 1962

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I have served a copy of this affidavit on counsel opposite by mail, this 26 April 1962, Morris B. Abram, Counsel for Plaintiff.]



CURRICULUM VITAE OF JAMES C. BONNER

Professor of History, Chairman of the Department
of History and Political Science, and Chairman of Faculty
Research and Graduate Study
The Woman's College of Georgia, Milledgeville

PERSONAL:

Born June 16, 1904, in Heard County, Georgia.
Married Ida Munro, 1936; children: Page Munro
(b. 1937), James C. (b. 1945). Episcopalian,
Rotarian.

EDUCATION:

A. B. J.; University of Georgia, 1926; M. A.
University of Georgia, 1936; Ph. D. (History),
University of North Carolina, 1943. Disser-
tation in Southern history.

POSITIONS HELD:

Principal-coach, Cave Spring (Georgia) High
School, 1926-27; Headmaster, Carrollton A & M
School, 1927-33; Instructor and Assistant Pro-
fessor of Social Sciences, West Georgia College,
1933-41; Adjunct Professor of History, Randolph-

Maton Woman's College, Lynchburg, Va., 1942-44; visiting Professor of History, Emory Uni-
versity, Fall, 1952; Professor of History, chairman of Department, and chairman of Faculty
Research and Graduate Study, The Woman's College of Georgia, 1944---

SCHOLARSHIPS, AWARDS, AND PROFESSIONAL ACTIVITIES:

Rosenwald fellowship, 1939; Research Assistant, Institute for Research in Social Science,
University of North Carolina, 1940-41; West Georgia College Founder's Award, 1945; Presi-
dent, Georgia Council for Social Studies, 1945; Executive Council; Agricultural History
Society, 1948-50; Editorial Board, Journal of Southern History, 1950-54; Visiting Scholar,
Duke University, 1953; Governor of Georgia Province, Pi Gamma Mu, 1958---; President,
Georgia Society for Historical Research, 1959-60. Advisory Board, National Civil War
Centennial Commission, 1960---; President, Old Capital Historical Society, 1958-60.
Southern Fellowship award, summer, 1958. Research Grant, American Association for State
and Local History, 1961. [fol 144]

LISTINGS:

Directory of American Scholars, 3rd Edition, 1957
Marquis Who's Who in the South and Southwest, 1962

PUBLICATIONS:

a) Books.

1. Studies in Georgia History and Government (Athens, 1940)
2. "William McIntosh" in Georgians in Profile, edited by Horace Montgomery
(Athens, 1958).
3. The Georgia Story (Oklahoma City, 1958, 1961 (Ga. School Adoption List).
4. A Short History of Heard County 1958, 1962.
5. A History of Georgia Agriculture to 1860 (in process of publication)
6. The Journal of Anna Maria Green, 1861-1867 (in press)

b) Articles.

1. "Genesis of Agricultural Reform in the Cotton Belt"
Journal of Southern History, IX:475-500 (November, 1943).

2. "Charles Calcock Jones: Macaulay of the South," Georgia Historical Quarterly, XXVII:324-328 (December, 1943).
 3. "Portrait of a Late Ante-Bellum Community," American Historical Review, XLIX:663-680 (July, 1944).
 4. "The Plantation Overseer and Southern Nationalism as Revealed in the Career of Garland D. Harmon," Agricultural History, XIX:1-11 (January, 1945).
 5. "Plantation Architecture of the Lower South on the Eve of the Civil War," Journal of Southern History, XI:358-388 (August, 1945).
 6. "The Angora Goat: A Footnote in Southern Agricultural History," Agricultural History, XXI:42-46 (January, 1947).
 7. "War Crimes Trials, 1865-1867," Social Science, XXII:128-133 (April, 1947).
 3. "Tobacco Industry in Ante-Bellum Georgia," Georgia Historical Quarterly, XXXI:241-248 (December, 1947).
 9. "Advancing Trends in Southern Agriculture, 1840-1860," Agricultural History, XXII:248-259 (October, 1948).
 10. "Sixteenth Annual Meeting of the Southern Historical Association," Journal of Southern History, XVII:48-58 (February, 1951).
 11. "A Georgia County's Historical Assets," Emory University Quarterly, IX:24-30 (March, 1953).
 12. "Historical Basis of Southern Military Tradition," Georgia Review, IX:3-14 (Spring, 1955).
 13. "Plantation Experiences of a New York Woman," North Carolina Historical Review, XXXIII:384-412; 529-546 (July and October, 1956).
 14. "Sherman at Milledgeville in 1864," Journal of Southern History, XXII:273-291 (August, 1956).
 15. "David R. Shelling: A Story of Desertion and Defection in the Civil War," Georgia Review, X:275-282 (Fall, 1956).
 16. "The Georgia Wine Industry on the Eve of the Civil War," Georgia Historical Quarterly, XLI:19-30 (March, 1957).
 17. "Tustunugee Hutkee and Creek Factionalism on the Georgia-Alabama Frontier," The Alabama Review, X:111-126 (April, 1957).
 18. "The Genesis of Georgia's Livestock Industry," Georgia Review, XI:187-195 (Summer, 1957).
 19. "The Writing of History," Georgia Review, XIV, (Fall, 1960).
 20. "Journal of a Mission to Georgia," Georgia Historical Quarterly, XLIV (March, 1960).
 21. "The Free Range Cattle Industry in Early Georgia (in press)
 22. Ten articles for the 1962 edition of Encyclopaedia Britannica, including a 10,000 word article on "Georgia" (in press)
- c) Book reviews in American Historical Review, Journal of Southern History, North Carolina Historical Review, Agricultural History, Georgia Review, Mississippi Valley Historical Review, and Georgia Historical Quarterly.

(REVISED APRIL, 1962)

Prepared by the Department of Public Relations

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[fol. 146]

PLAINTIFFS' EXHIBIT 10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION NO. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA

FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, JAMES O'HEAR SANDERS, who, after being duly sworn, deposes and says that he is the plaintiff in the captioned case. That your deponent is a citizen of the United States and the State of Georgia and a resident of the County of Fulton, and has resided in said County since 1920.

Deponent further says that he is a registered voter qualified to vote in primary and general elections in Fulton County, Georgia; that he is a member of the Democratic Party of Georgia; that he intends to vote in the Democratic Primary election to be held in the State of Georgia on September 12, 1962, and further that he intends to support the nominees of such primary election in the general election to be held in Georgia in 1962.

This affidavit is given for use in the captioned case.

/s/ JAMES O'HEAR SANDERS

Sworn to and subscribed before
me this 25 day of April, 1962.

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large.
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I have served a copy of the within
on counsel opposite by mail, this April 26, 1962, Morris B.
Abram, Counsel for plaintiff.]

[fol. 147]

PLAINTIFFS' EXHIBIT 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer
duly authorized by law to administer oaths, WILLIAM B.
HARTSFIELD, who, after being sworn, deposes and says as
follows:

That he is William B. Hartsfield, a citizen of Fulton
County, Georgia. Your deponent served on the Board of
Aldermen of the City of Atlanta six years, 1923 to 1928.
He served as a member of the General Assembly of Georgia.

representing the County of Fulton, for two terms, encompassing the years 1933 to 1936. That he was elected Mayor of the City of Atlanta six times and served in said office a total of approximately twenty-four years. That he retired from the office of Mayor of the City of Atlanta in January, 1962, having not offered for reelection in the primary election for that office in 1961.

Your deponent shows that he has served as a Trustee of the United States Conference of Mayors some six years and as President of the American Municipal Association. Your deponent has been a student of practical and theoretical politics for many years. That he has been intimately connected with the history of Georgia in the last thirty-five years and that he has made a special study of the county unit system as used in the Georgia Democratic primaries.

Your deponent says that the county unit system, by depressing the influence of ballots cast in counties containing larger populations, has depressed the interest of citizens in said counties, particularly Fulton County, as far as participation in state-wide nominations of the Democratic Party. That potential voters, for example in the County of Fulton, knowing that their ballots cast in Fulton County are debased, frequently take the attitude that there is no use in registering and voting in primaries for state-wide offices. That your deponent verily believes that despite the fact that there is keen interest in local elections where the votes of citizens of Fulton County are not debased, that this circumstance of itself does not generate the full variety of interest in political and governmental affairs which would be the case if Fulton voters enjoyed full ballots in state-wide primary elections.

Your deponent further shows that the citizens of Fulton and other counties in which metropolitan centers are located in the State of Georgia have, as a result of their residence, very little chance for nomination in state-wide primaries. That every student of political affairs in Georgia knows that this is a cardinal rule of politics, established in theory and proved in practice.

That no man from Fulton County, Georgia has served as Governor since the election of Hugh M. Dorsey approximately four decades ago; that no resident of Fulton County, Georgia has served as United States Senator in this Twentieth Century and that moreover, no resident of Fulton County, Georgia, has served in the United States Congress for a full term for more than twenty-five years (Con-[fol. 149] gressional nominations in the last sixteen years have been on a county unit basis and during this period two candidates who were residents of Fulton County, Georgia, and on separate occasions, won the popular vote but lost the county unit vote within the Congressional District of which Fulton County is a part).

Your deponent further says that of his own independent knowledge, the statement of the authority V. O. Key in "Southern Politics in State and Nation", Alfred A. Knopf, New York, 1949, p. 122, is correct:

"In normal campaigns, a vote anywhere is a vote gained or lost. It is always to the candidate's advantage to win a vote anywhere; hence the campaign is fought in every quarter with equal vigor. In Georgia every statewide campaign is made up of 159 separate races, one for the unit votes of each county. Practical politicians emphasize that the man who knows what he is doing diagnoses every county individually. He classifies the counties into three groups: those in which he is sure of a plurality; those in which he has no chance of a plurality; those which are doubtful. He forgets about the first two groups except for routine coverage. He concentrates his resources in the third group: expenditures, appearances by the candidate, negotiations, all the tricks of county politicking . . ."

Moreover, it has become politically profitable for candidates for state-wide offices to run races in which direct attacks are made upon the centers having the greatest population and hence potentially the most voters. Many of the most successful state-wide politicians have run campaigns scorn^{ing} the city counties and search for votes in the country which far outweigh city ballots. Your deponent does

not know of any other state where successful candidates denounce the major population centers in political campaigns to the extent that this is done in Georgia. Deponent has heard major and many times successful candidates for statewide offices state that he didn't care to campaign in any area that had street cars.

[fol. 150] Your deponent states that throughout his career as a public official, the City of Atlanta has been held up to scorn and subjected to campaigns of vilification and abuse have been directed against its citizens and usually by the successful candidate, all with the intention of influencing a large number of small counties' unit votes by prejudicial and invidious arguments. Your deponent says that he is quite well acquainted with voting results in the largest metropolitan area in Georgia. Voters in Atlanta and Fulton County divide amongst the various candidates on what voters conceive to be their interests as they interpret the same from the records and the issues presented by the candidates. When one candidate clearly demonstrates that he opposes what any voter regards as a legitimate hope or aspiration, this voter and others similarly situated, of course, tends to vote against said candidate. However, when rival candidates do not flatly offend the sensitivities, and none asserts a position of opposition to full citizenship participation by any group on an invidious basis, the votes divide and fragment amongst the candidates. The election records amply support this assertion. The County Unit System makes it profitable for ambitious candidates to create false and prejudicial issues dividing city from country, race from race, and labor from capital. This naturally create blocs of votes of country people marshalled against their city brethren on no basis of principle or real self interest.

If Georgians could vote on a popular vote basis in statewide elections, I assert that no serious candidate would dare create the divisive, false and prejudicial issues which have divided our state. The vote is a shield against those who would represent them. Today hundreds of thousands [fol. 151] of Georgians have very little such protection.

They are under the County Unit System, paradoxically excoriated by those who would govern them.

This affidavit is given for use in the captioned case.

/s/ Wm. B. HARTSFIELD

Sworn to and subscribed before me
this 25 day of April, 1962.

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—This is to certify I have served
a copy of the written affidavit on counsel opposite by mail,
26 April, 1962, Morris B. Abram, Attorney for plaintiff.]

[fol. 152]

PLAINTIFFS' EXHIBIT 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer
duly authorized by law to administer oaths, LESLIE J. GAY.

LORD, who, after being duly sworn deposes and says as follows:

Deponent's name is Leslie J. Gaylord, a resident of DeKalb County, Georgia, residing at 120 Glendale Avenue, Decatur, Georgia. Deponent has been a resident of the State of Georgia for forty-one years and is presently assistant professor of mathematics at Agnes Scott College, Decatur, Georgia, and has been on the faculty at Agnes Scott College since 1921, teaching there mathematics. Your deponent was educated as follows: Lake Erie College, Painesville, Ohio; University of Chicago, Chicago, Illinois, and University of Rome, Rome, Italy, and holds a BA degree and Master of Science, the latter being in the specialty of mathematics.

Deponent says that the figures from which the mathematical calculations in this affidavit and on the tables appended thereto were calculated, are drawn from one of the following sources: The official United States Census, the official Georgia Statistical Register or (in the case of figures on registered voters) from the materials kept and [fol. 153] maintained in the office of the Secretary of State of the State of Georgia. Furthermore, all mathematical calculations are done by standard techniques.

When hereafter in this affidavit or any supplementary affidavit filed in this case, your deponent refers to the 547 unit proposal, she means thereby to refer to the proposal which was publicly denominated as having been made by Mr. Roy V. Harris of Augusta, Georgia, as apparently approved by the Governor and as passed by the House of Representatives, in slightly amended form, in Extraordinary Session of the current General Assembly and known as H.B. #1.

When your deponent herein refers to current county unit system or the 410 unit vote county unit system, she means thereby to refer to the county unit system as established under the Neill Primary Act, Georgia Laws 1917, pp. 183-189.

Your deponent says that she has previously furnished an affidavit to this Court in the captioned case in which she

had referred to the term "equal proportions". The term "equal proportions" was used in her previous affidavit in the sense that apparently the Governor intended it to be used in his original proposals which he publicly purposed to propose to the General Assembly of Georgia in Extraordinary Session.

Your deponent shows that the 547 unit plan does not propose to assign unit votes on an "equal proportions formula" and that that formula has apparently been abandoned in the framing of the present 547 unit vote proposal. That the present 547 unit vote proposal is an arbitrary proposal in which unit votes are assigned to achieve a pre-designed result. Under the 547 unit vote proposal, a majority of the population (50.4%) of voting age residing in the State of Georgia would have only 31.1% of the total units as- [fol. 154] signed to the State as a whole. This is to be contrasted with the Neill Primary Act under which that same population has 17.6% of the total unit votes of the State.

Beginning with the largest county and taking the counties of Georgia in descending order of population, fourteen counties have said 50.4% of the population of voting age.

Your deponent has calculated the percentage of voting strength represented by population over eighteen year of age in Georgia needed to elect a governor or senator under the Neill Primary Act and under the 547 unit proposal. Attached hereto and made a part hereof, as Exhibits A and B, are tables showing the result of these calculations. In summary, under the Neill Primary Act, in a two-man race, 12% of said population can elect; in a three-man race, 8% can elect; in a four-man race, 6% can elect, and in a five-man race, 4.8% can elect.

Under the 547 proposal, in a two-man race, 15.4% can elect; in a three-man race, 10.2% can elect; in a four-man race, 7.7% can elect and in a five-man race, 6.1% can elect.

Your deponent shows while these may not be probabilities, they are certainly and assuredly mathematical possibilities, and election experience in the state has several times demonstrated that a candidate receiving a distinct

minority of votes has, in fact, won statewide primary elections under the county unit system.

Attached hereto and made a part hereof as Exhibit 1 are calculations made elsewhere, showing the minimum population required to elect a majority of Georgia's House and Senate. While your deponent has not herself calculated these results, they appear to her to be correct. Capsuling [fol 155] these results, they demonstrate: (1) that voters in counties containing 22.2% of Georgia's total 1960 population can elect a majority of the House of Representatives of Georgia; (2) that voters in the 28 smallest senatorial districts containing 22.6% of the 1960 population can elect a majority of the State Senate and (3) that due to the rotation system for nominating senators in the Democratic primary, voters of 28 counties containing 5.5% of the total 1960 population have elected a majority of the present State Senate.

Thus it is that under the 547 unit proposal and under the present apportionment of Georgia's House and Senate and the election laws of this state, distinct and small minorities of voters can control the legislative and executive branches. Moreover, inasmuch as the judiciary, the Public Service Commission and other statehouse officers are selected under the county unit system, and may be under present law elected without obtaining even a majority of the county units, the judiciary and these other statehouse officers may be elected by a lesser number of votes of the state than would be the case of the governor and the U. S. Senator, both of whom, under the present law, are required to obtain a majority of the unit votes cast.

Attached hereto and made a part hereof are tables, marked Exhibits C and D, showing the voting power of Georgia population of voting age (Exhibit C) under the Neill Primary Act and 547 unit vote proposal, and the same using total population figures (Exhibit D). Said Exhibits C and D also show the voting strength of the groupings of counties under the original 545 unit proposal using "equal proportions" and also using the 545 unit proposal with no counties losing votes and the balance of the votes available assigned under "equal proportions." Your deponent shows

[fol. 156] that as a result of the dropping from the proposal the so-called "equal proportions" features, the voting power of a majority of the population has declined.

Your deponent has made a study comparing disparity ratios in the distribution of the votes in the U. S. electoral college and under the Georgia Neill Primary Act and further under the 547 unit proposal. Said study is incorporated in Exhibit E attached hereto and made a part hereof. A summary of said study shows that in the U. S. electoral college, 62% of the states are within 15% of "parity" as defined in said table; only 18.8% of the counties of Georgia are within the 15% range under the Neill Primary Act and only 23.2% of the counties would be within the range under the 547 unit proposal.

Your deponent has made an examination of the comparison of the number of votes cast in primary elections with the number cast in general elections in the State of Georgia in representative non-presidential election years. The result of said study is shown in Exhibit F, attached hereto and made a part hereof. A summary of said exhibit shows that in general, only a fraction of voters participate in said general elections as compared to voters participating in the statewide Democratic primaries.

Your deponent has made an inspection of the number of registered voters in 1960 as compared with the 1960 population over eighteen years of age in the State and has found that fifteen counties have more registered voters than they have population eligible by age to vote. Your deponent, from her general knowledge and experience, shows that it is not normal for 100% of persons of age to vote, to qualify and register. Your deponent further shows that each of the fifteen counties listed in Exhibit G is a two-vote county and has a disproportionate amount of voting power, both under the Neill Primary Act and the 547 unit proposal.

Your deponent shows, as demonstrated in said exhibit, the county of Long has 160% of the population over eighteen [fol. 157] registered to vote; Union County has 142% and the County of Franklin has 147%.

Your deponent shows that she has made an examination of the rural population census in the various counties of Georgia and said study is incorporated in Exhibit H, attached hereto and made a part hereof. Said study in summary shows that Fulton County ranks third in the state in rural population.

This affidavit is given for the purpose of being used as evidence in the above case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before me
this 25 day of April, 1962.

/s/ FRANCES H. WILLIAMS
Notary Public

[Handwritten notation—I have served a copy of this affidavit on counsel opposite by mail this 26th April, 1962, Morris B. Abram, counsel for plaintiff.]

[fol. 158]

Minimum of Total 1960 Population of Georgia
Which Can *Nominate* Majority of Members of
State Senate in the DEMOCRATIC PRIMARY

Nomination in the Democratic Primary in Georgia has been nearly always tantamount to election for a long number of years. Under a rotation system, State Senators are nominated in the Democratic Primary in Georgia by the voters of only approximately $\frac{1}{3}$ of the 159 counties. Accordingly, voters in the 28 smallest counties of the approximately $\frac{1}{3}$ of the counties (54) whose "turn" it is to nominate a Senator in the Democratic Primary can usually "elect" a majority of the Georgia Senate every two years.

As shown in the attached table, voters in counties having 5.5% (215,830) of the total 1960 state population actually elected a majority of the present State Senate, since all Democratic nominees were elected (ratified) in the 1960 general election, where voters of all counties could vote.

A more detailed explanation is in order. Of Georgia's 54 State Senatorial districts, 52 have three counties each. Fulton County (Atlanta) is a one-county district. Chatham County (Savannah) and Effingham County constitute a two-county district.

In the 52 three-county districts, the statutes provide that in the Democratic Primary election, the voters of only one of the three counties shall nominate the candidate for Senator every two years. The statutes provide also for rotation among the three counties in a fixed order every two years. In the two-county Chatham-Effingham district, Chatham County (Savannah) is given two "turns" to Effingham's one "turn"—that is, for two successive primaries the voters of Chatham County nominate the Senator and then in every third primary Effingham County nominates him.

The attached table shows the counties which have nominated and will nominate Senators in the Democratic Primary elections of 1960, 1962, and 1964. The counties listed under each of these years are ranked from best to highest according to 1960 population. (Use of 1960 population figures makes these tables hypothetical for the 1962 and 1964 primaries. It is probable, however, that the relative figures would be approximately the same if actual population data were known.)

These tables show that:

- (a) In the 1960 Democratic Primary, voters in 28 counties containing 5.5% (215,830) of the total state population (3,943,116) "elected" a majority of the Georgia State Senate.
- (b) In the 1962 Democratic Primary, voters in 28 counties containing 6.2% (245,158) of the 1960 total state population (3,943,116) could "elect" a majority of the Georgia State Senate.
- (c) In the 1964 Democratic Primary, voters in 28 counties containing 5.2% (203,188) of the 1960 total state population (3,943,116) could "elect" a majority of the Georgia State Senate.

Counties With 1960 Population According to Democratic Primary in Which They Nominate State Senator

| | | 1960 | | 1962 | | 1964 |
|----|------------|-----------|---------------|-----------|------------|-----------|
| 1 | Echols | 1,976 | Glascock | 2,672 | Webster | 3,247 |
| 2 | Culman | 2,432 | Gibney | 3,254 | Long | 3,371 |
| 3 | Towns | 4,538 | Talbot | 3,370 | Baker | 4,543 |
| 4 | Charlton | 5,313 | Dawson | 3,590 | Clay | 4,551 |
| 5 | Crawford | 5,316 | Wheeler | 5,342 | Lanier | 5,097 |
| 6 | Brantley | 5,891 | Trenton | 5,874 | Heard | 5,333 |
| 7 | Lee | 6,264 | Lancon | 5,926 | Marion | 5,477 |
| 8 | Bryan | 6,226 | Jasper | 6,135 | Oconee | 6,301 |
| 9 | Montgomery | 6,204 | Atkinson | 6,188 | Banks | 6,497 |
| 10 | Evans | 6,952 | McIntosh | 6,364 | Clinch | 6,548 |
| 11 | Lumpkin | 7,241 | Union | 6,510 | Candler | 6,671 |
| 12 | Calhoun | 7,341 | Seminole | 6,802 | Miller | 6,908 |
| 13 | Varren | 7,360 | Stewart | 7,371 | White | 6,935 |
| 14 | Oglethorpe | 7,976 | Racon | 8,359 | Talbot | 7,127 |
| 15 | Twigge | 7,935 | Jones | 8,468 | Pike | 7,138 |
| 16 | Johnson | 8,048 | Pickens | 8,903 | Rabun | 7,456 |
| 17 | Dade | 8,666 | Butts | 8,976 | Putnam | 7,768 |
| 18 | Jeff Davis | 8,914 | Lincoln | 9,979 | Wilcox | 7,908 |
| 19 | Gilmer | 8,922 | Dooley | 11,414 | Fayette | 8,195 |
| 20 | Jenkins | 9,148 | Perrien | 12,008 | Dalaski | 8,204 |
| 21 | Irwin | 9,211 | Foran | 12,179 | Taylor | 8,311 |
| 22 | Bleckley | 9,542 | Terrell | 12,712 | Turner | 8,351 |
| 23 | Pierce | 9,678 | Chattahoochee | 13,011 | Wilkinson | 9,253 |
| 24 | Morgan | 10,200 | Early | 13,151 | Camden | 9,971 |
| 25 | Monroe | 10,145 | Ben Hill | 13,633 | Effingham | 10,144 |
| 26 | Randolph | 11,078 | Peach | 13,846 | Lamar | 10,210 |
| 27 | Harris | 11,167 | Barrow | 14,485 | Murray | 10,447 |
| 28 | Madison | 11,116 | Marlson | 14,543 | Rockdale | 10,572 |
| | | 215,910 | | 245,158 | | 203,188 |
| | | 5.5% | | 6.2% | | 5.2% |
| 29 | Paulding | 13,191 | Scriven | 14,919 | Vilkes | 10,461 |
| 30 | Macon | 13,170 | Tatnall | 15,837 | Greene | 11,193 |
| 31 | Columbia | 13,423 | Lodge | 16,483 | Telfair | 11,715 |
| 32 | Brooks | 14,262 | Henry | 17,619 | Cook | 11,822 |
| 33 | Douglas | 16,741 | Elbert | 17,835 | McLuffie | 12,627 |
| 34 | Crisp | 17,768 | Wayne | 17,921 | Appling | 13,246 |
| 35 | Stephens | 18,391 | Grady | 18,015 | Franklin | 13,274 |
| 36 | Jackson | 18,499 | Habersham | 18,116 | Fannin | 13,620 |
| 37 | Walton | 20,481 | Gordon | 19,228 | Liberty | 14,487 |
| 38 | Decatur | 25,203 | Meriwether | 19,756 | Hart | 15,225 |
| 39 | Bartow | 28,267 | Chattooga | 19,954 | Worth | 16,682 |
| 40 | Gowea | 28,893 | Tift | 23,487 | Teombs | 16,837 |
| 41 | Laurens | 32,313 | Upson | 23,800 | Jefferson | 17,468 |
| 42 | Calquitt | 34,048 | Bulloch | 24,263 | Emanuel | 17,815 |
| 43 | Baldwin | 34,064 | Houston | 39,154 | Washington | 18,901 |
| 44 | Ware | 34,219 | Glynn | 41,954 | Mitchell | 19,652 |
| 45 | Thomas | 34,319 | Gwinnett | 43,541 | Burke | 20,596 |
| 46 | Spalding | 35,404 | Falker | 45,264 | Newton | 20,999 |
| 47 | Carroll | 36,451 | Clarke | 45,363 | Catoosa | 21,101 |
| 48 | Whitfield | 42,109 | Clayton | 46,365 | Coffey | 21,953 |
| 49 | Hall | 49,739 | Troup | 47,189 | Cherokee | 23,001 |
| 50 | Richmond | 135,601 | Lowndes | 49,270 | Sumter | 24,652 |
| 51 | Muscogee | 158,623 | Dougherty | 75,680 | Polk | 28,015 |
| 52 | Chatham | 148,299 | Cobb | 114,174 | Floyd | 69,130 |
| 53 | DeKalb | 246,782 | Chatham | 188,299 | Bibb | 141,241 |
| 54 | Fulton | 554,226 | Fulton | 556,326 | Fulton | 556,326 |
| | | 2,068,239 | | 1,805,245 | | 1,270,581 |

Minimum of Total 1960 Population of Georgia Which
Can Elect Majority of Members of State Senate in
the GENERAL ELECTION

As shown in the attached table, voters in districts containing 22.6% (890,346) of the total 1960 population of Georgia (3,943,116) can hypothetically elect a majority (28) of the total membership of the State Senate (55).

This minimum was arrived at by ranking the 54 senatorial districts from lowest to highest according to 1960 population. Each district elects one Senator. As shown in the attached table, the 28 smallest districts whose voters can elect a majority of the State Senate had a combined 1960 population of 890,346, or 22.6% of the total 1960 state population.

This is the minimum population that can elect a majority of the State Senate in the General Election. As shown in a separate table, actually a much smaller minimum can elect a majority of the State Senate in the Democratic Primary Election, and nomination in this primary election has been virtually tantamount to election in Georgia for a long time.

Under the rotation system used in the Democratic Primary Election, voters in only approximately 1/3 of Georgia's 153 counties choose all 54 nominees for the State Senate every two years. These 54 Democratic nominees, chosen by the voters in only approximately 1/3 of the counties, have been for a long number of years nearly always elected (ratified) in the general election, where voters in all of the counties can vote.

In actual practice, then, voters in the 28 smallest counties of the 54 counties which "vote" to nominate a Senator in the Democratic Primary, have been able to elect a majority of the Georgia Senate.

A majority of the present Georgia Senate was nominated in the Democratic Primary (actually "elected") by the voters in 28 counties which contained 5.5% (215,833) of the total 1960 population of the state. (SEE SEPARATE TABLE: "Minimum of Total 1960 Population of Georgia Which Can Nominate Majority of Members of the State Senate in DEMOCRATIC PRIMARY.")

(EACH DISTRICT HAS ONE SENATOR)

| Rank Order by Population | 1960 Population | Senatorial District No. | Counties in District |
|-----------------------------|--------------------|----------------------------|-------------------------------|
| 1 | 13,050 | 12th | Quitman, Stewart, Webster |
| 2 | 17,766 | 32nd | Lumpkin, Dawson, White |
| 3 | 18,504 | 40th | Towns, Union, Rabun |
| 4 | 21,923 | 19th | Warren, Taliaferro, Greene |
| 5 | 24,213 | 28th | Morgan, Jasper, Putnam |
| 6 | 25,035 | 9th | Calhoun, Early, Baker |
| 7 | 25,766 | 21st | Johnson, Jones, Wilkinson |
| 8 | 27,077 | 2nd | Bryan, McIntosh, Liberty |
| 9 | 27,686 | 3rd | Brantley, Wayne, Long |
| 10 | 27,973 | 23rd | Crawford, Peach, Taylor |
| 11 | 28,371 | 11th | Randolph, Terrell, Clay |
| 12 | 28,463 | 15th | Montgomery, Wheeler, Toombs |
| 13 | 29,320 | 14th | Bleckley, Dooly, Pulaski |
| 14 | 29,711 | 32nd | Monroe, Butts, Lamar |
| 15 | 31,435 | 41st | Gilmer, Pickens, Fannin |
| 16 | 31,956 | 29th | Columbia, Lincoln, McDuffie |
| 17 | 34,559 | 5th | Irwin, Ben Hill, Telfair |
| 18 | 37,887 | 49th | Evans, Bulloch, Candler |
| 19 | 37,997 | 54th | Jeff Davis, Tattnall, Appling |
| 20 | 38,913 | 8th | Decatur, Seminole, Miller |
| 21 | 39,152 | 53rd | Brooks, Berrien, Cook |
| 22 | 39,288 | 37th | Jackson, Farrow, Decon |
| 23 | 39,990 | 46th | Pierce, Bacon, Coffee |
| 24 | 41,078 | 13th | Macon, Schley, Sumter |
| 25 | 42,094 | 25th | Harria, Upson, Talbot |
| 26 | 42,156 | 48th | Crisp, Dodge, Wilcox |
| 27 | 44,310 | 30th | Madison, Elbert, Hart |
| 28 | 44,663 | 17th | Jenkins, Screven, Burke |
| | 890,346 (22.6%) | | |
| 29 | 46,952 | 5th | Ware, Atkinson, Clinch |
| 30 | 49,781 | 31st | Stephens, Habersham, Franklin |
| 31 | 55,550 | 38th | Paulding, Haralson, Polk |
| 32 | 55,787 | 36th | Coweta, Meriwether, Pike |
| 33 | 56,000 | 16th | Laurens, Treutlen, Emanuel |
| 34 | 57,043 | 6th | Echols, Lowndes, Lanier |
| 35 | 57,042 | 4th | Charlton, Glynn, Camden |
| 36 | 59,090 | 35th | Walton, Henry, Newton |
| 37 | 62,946 | 20th | Baldwin, Hancock, Washington |

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| Rank | Population | Senatorial District | Counties in District |
|------|------------|---------------------|-------------------------|
| 38 | 54,250 | 5th | Agilethorpe, ... |
| 39 | 55,974 | 47th | Colquhoun, ... |
| 40 | 54,406 | 33rd | Hall, Forsyth, ... |
| 41 | 71,784 | 43rd | Whitfield, Gordon, ... |
| 42 | 71,986 | 7th | Thomas, Grady, Mitchell |
| 43 | 75,031 | 44th | Dade, Walker, ... |
| 44 | 88,973 | 37th | Carroll, Troup, ... |
| 45 | 89,936 | 26th | Spalding, Clayton, ... |
| 46 | 98,566 | 10th | Lee, Dougherty, ... |
| 47 | 117,351 | 42nd | Bartow, Chattooga, ... |
| 48 | 153,916 | 9th | Douglas, Cobb, ... |
| 49 | 155,741 | 12th | Richmond, ... |
| 50 | 177,117 | 1st | Amesbury, ... |
| 51 | 180,338 | 51st | Talbot, ... |
| 52 | 198,443 | 1st | Chatham, ... |
| 53 | 210,895 | 2nd | Dekalb, ... |
| 54 | 558,526 | 5th | ... |

116 TOTAL 1960 STATE POPULATION

April, 1962

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TABLE 1. POPULATION OF GEORGIA WHICH CAN ELECT

MAJORITY OF MEMBERS OF HOUSE OF REPRESENTATIVES

In the table below, 22.2% (874,396) of the total 1960 population of Georgia (3,931,115) can hypothetically elect a majority (103) of the total member Georgia House of Representatives (205).

The minimum was arrived at by ranking the 159 counties from lowest to highest according to population-per-representative. As shown below, the 94 counties with the lowest population-per-representative can elect a majority (103) Georgia House. These 94 counties have a total population of 874,396, or

22.2% of the total 1960 state population.

| Representative | County | 1960 Population Per Representative | 1960 Population | Members Representatives (Ga. Laws 1961, Population §. 111) |
|----------------|------------|---|--------------------|---|
| | | | | |
| | Richards | 1,876 | 1,876 | 1 |
| | Pittman | 2,432 | 2,432 | 1 |
| | Glascock | 2,672 | 2,672 | 1 |
| | Webster | 3,247 | 3,247 | 1 |
| | Schley | 3,256 | 3,256 | 1 |
| | Taliaferro | 3,370 | 3,370 | 1 |
| | Dawson | 3,590 | 3,590 | 1 |
| | Long | 3,874 | 3,874 | 1 |
| | Towns | 4,538 | 4,538 | 1 |
| | Baker | 4,543 | 4,543 | 1 |
| | Clay | 4,551 | 4,551 | 1 |
| | Lanier | 5,097 | 5,097 | 1 |
| | Charlton | 5,313 | 5,313 | 1 |
| | Heard | 5,333 | 5,333 | 1 |
| | Wheeler | 5,342 | 5,342 | 1 |
| | Marion | 5,477 | 5,477 | 1 |
| | Crawford | 5,816 | 5,816 | 1 |
| | Treutlen | 5,874 | 5,874 | 1 |
| | Crantley | 5,891 | 5,891 | 1 |
| | Lincoln | 5,906 | 5,906 | 1 |
| | Jasper | 6,135 | 6,135 | 1 |
| | Atkinson | 6,188 | 6,188 | 1 |
| | Lee | 6,204 | 6,204 | 1 |
| | Ryan | 6,226 | 6,226 | 1 |
| | Montgomery | 6,284 | 6,284 | 1 |
| | Collier | 6,304 | 6,304 | 1 |
| | McIntosh | 6,364 | 6,364 | 1 |

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| County | Population | | Representative | Population | Representative |
|------------|------------|--------|----------------|------------|----------------|
| | 1911 | 1930 | | | |
| Panola | 6,497 | 6,477 | 1 | | |
| Union | 6,510 | 6,511 | 1 | | |
| Clinch | 6,545 | 6,545 | 1 | | |
| Candler | 6,672 | 6,672 | 1 | | |
| Seminole | 6,802 | 6,802 | 1 | | |
| Miller | 6,908 | 6,908 | 1 | | |
| White | 6,935 | 6,935 | 1 | | |
| Evans | 6,952 | 6,952 | 1 | | |
| Talbot | 7,127 | 7,127 | 1 | | |
| Pike | 7,133 | 7,133 | 1 | | |
| Lumpkin | 7,241 | 7,241 | 1 | | |
| Whitman | 7,341 | 7,341 | 1 | | |
| Warren | 7,360 | 7,360 | 1 | | |
| Stewart | 7,371 | 7,371 | 1 | | |
| Adair | 7,450 | 7,450 | 1 | | |
| Wilkes | 7,798 | 7,798 | 1 | | |
| Wilcox | 7,925 | 7,925 | 1 | | |
| Wilkes | 7,926 | 7,926 | 1 | | |
| Twiggs | 7,935 | 7,935 | 1 | | |
| Johnson | 8,048 | 8,048 | 1 | | |
| Jayette | 8,159 | 8,159 | 1 | | |
| Pulaski | 8,204 | 8,204 | 1 | | |
| Taylor | 8,311 | 8,311 | 1 | | |
| Bacon | 8,359 | 8,359 | 1 | | |
| Turner | 8,439 | 8,439 | 1 | | |
| Jones | 8,468 | 8,468 | 1 | | |
| Dade | 8,666 | 8,666 | 1 | | |
| Pickens | 8,903 | 8,903 | 1 | | |
| Jeff Davis | 8,914 | 8,914 | 1 | | |
| Gilmer | 8,922 | 8,922 | 1 | | |
| Butts | 8,976 | 8,976 | 1 | | |
| Jenkins | 9,148 | 9,148 | 1 | | |
| Irwin | 9,211 | 9,211 | 1 | | |
| Wilkinson | 9,250 | 9,250 | 1 | | |
| Bleckley | 9,642 | 9,642 | 1 | | |
| Pierce | 9,678 | 9,678 | 1 | | |
| Camden | 9,975 | 9,975 | 1 | | |
| Hancock | 9,979 | 9,979 | 1 | | |
| Hoffingham | 10,144 | 10,144 | 1 | | |
| Lamar | 10,240 | 10,240 | 1 | | |
| Merriam | 10,280 | 10,280 | 1 | | |
| Montgomery | 10,447 | 10,447 | 1 | | |
| Monroe | 10,495 | 10,495 | 1 | | |
| Newton | 10,500 | 10,500 | 1 | | |

1960

Population

Per

Representative

1960

Population

Center

Representative

(Cal. Laws 1961,

p. 111)

Office

County

| | | | | |
|-----|------------|--------|--------|---|
| | Hart | 15,229 | 15,229 | 1 |
| | Brooks | 15,292 | 15,292 | 1 |
| | Tattnall | 15,837 | 15,837 | 1 |
| | Laurens | 16,157 | 32,313 | 2 |
| | Dodge | 16,483 | 16,483 | 1 |
| | Worth | 16,682 | 16,682 | 1 |
| | Douglas | 16,741 | 16,741 | 1 |
| | Toombs | 16,837 | 16,837 | 1 |
| 118 | Colquitt | 17,024 | 34,048 | 2 |
| 119 | Baldwin | 17,032 | 34,064 | 2 |
| 120 | Ware | 17,110 | 34,219 | 2 |
| 121 | Thomas | 17,160 | 34,319 | 2 |
| 122 | Jefferson | 17,468 | 17,468 | 1 |
| 123 | Henry | 17,619 | 17,619 | 1 |
| 124 | Spalding | 17,702 | 35,404 | 2 |
| 125 | Crisp | 17,768 | 17,768 | 1 |
| 126 | Emanuel | 17,815 | 17,815 | 1 |
| 127 | Elbert | 17,835 | 17,835 | 1 |
| 128 | Wayne | 17,921 | 17,921 | 1 |
| 129 | Grady | 18,015 | 18,015 | 1 |
| 130 | Habersham | 18,116 | 18,116 | 1 |
| 131 | Carroll | 18,226 | 36,451 | 2 |
| 132 | Stephens | 18,391 | 18,391 | 1 |
| 133 | Jackson | 18,499 | 18,499 | 1 |
| 134 | Washington | 18,903 | 18,903 | 1 |
| 135 | Gordon | 19,228 | 19,228 | 1 |
| 136 | Houston | 19,577 | 39,154 | 2 |
| 137 | Mitchell | 19,652 | 19,652 | 1 |
| 138 | Meriwether | 19,756 | 19,756 | 1 |
| 139 | Chattooga | 19,954 | 19,954 | 1 |
| 140 | Walton | 20,481 | 20,481 | 1 |
| 141 | Burke | 20,596 | 20,596 | 1 |
| 142 | Glynn | 20,977 | 41,954 | 2 |
| 143 | Whitfield | 21,055 | 42,109 | 2 |
| 144 | Gwinnett | 21,771 | 43,541 | 2 |
| 145 | Walker | 22,632 | 45,264 | 2 |
| 146 | Clarke | 22,682 | 45,363 | 2 |
| 147 | Clayton | 23,183 | 46,365 | 2 |
| 148 | Troup | 23,595 | 47,189 | 2 |
| 149 | Lowndes | 24,635 | 49,270 | 2 |
| 150 | Hall | 24,870 | 49,739 | 2 |
| 151 | Dougherty | 25,217 | 75,680 | 3 |
| 152 | Floyd | 34,565 | 69,130 | 2 |

| | | | |
|-----------|--------|----------|---|
| Carroll | 10,551 | 20,111 | 1 |
| Boonville | 10,572 | 40,371 | 1 |
| Williams | 10,961 | 10,961 | 1 |
| Coffee | 10,977 | 21,285 | 1 |
| Randolph | 11,078 | 11,078 | 1 |
| Harris | 11,167 | 11,167 | 1 |
| Greene | 11,193 | 11,193 | 1 |
| Madison | 11,246 | 11,246 | 1 |
| Dooly | 11,474 | 11,474 | 1 |
| Cherokee | 11,501 | 23,241 | 2 |
| Telfair | 11,715 | 11,715 | 1 |
| Tift | 11,744 | 23,287 | 2 |
| Cobb | 11,822 | 11,822 | 1 |
| Upson | 11,900 | 23,822 | 2 |
| Terrell | 12,038 | 12,038 | 1 |
| Pullock | 12,132 | 24,263 | 2 |
| Forayth | 12,170 | 12,170 | 1 |
| Sumter | 12,326 | 20,552 | 2 |
| Decatur | 12,602 | 25,228 | 2 |
| Wilkes | 12,627 | 12,627 | 1 |
| Terrell | 12,742 | 12,742 | 1 |
| Charlton | 13,011 | 13,011 | 1 |
| Wayne | 13,101 | 13,101 | 1 |
| | | 74,376 | |
| | | (22,211) | |

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| | | | |
|-----------|--------|--------|---|
| Early | 13,151 | 13,151 | 1 |
| Macon | 13,170 | 13,170 | 1 |
| Appling | 13,246 | 13,246 | 1 |
| Franklin | 13,274 | 13,274 | 1 |
| Columbia | 13,423 | 13,423 | 1 |
| Paulding | 13,620 | 13,620 | 1 |
| Den Hill | 13,633 | 13,633 | 1 |
| Peach | 13,846 | 13,846 | 1 |
| Polk | 14,008 | 28,016 | 2 |
| Barrow | 14,134 | 28,267 | 2 |
| Covington | 14,447 | 28,393 | 2 |
| Barrow | 14,485 | 14,485 | 1 |
| Spalding | 14,487 | 14,487 | 1 |
| Walton | 14,543 | 14,543 | 1 |
| Gordon | 14,919 | 14,919 | 1 |

| County | 1960 | Number | |
|-----------|--------------------|--------------------|-------------------------|
| | Population | Per Representative | (Ga. Laws 1961, p. 111) |
| | Per Representative | Population | |
| Cobb | 38,053 | 114,174 | 3 |
| Dickinson | 48,200 | 135,671 | 3 |
| Durham | 47,083 | 141,249 | 3 |
| Henry | 52,874 | 158,623 | 3 |
| Chatham | 62,766 | 188,294 | 3 |
| DeKalb | 85,594 | 256,782 | 3 |
| Fulton | 190,442 | 550,326 | 3 |
| | | <u>3,943,116</u> | <u>205</u> |

PERCENT OF VOTING STRENGTH REPRESENTED BY POPULATION OVER 18 YEARS OLD NEEDED TO ELECT GOVERNOR OR SENATOR.

PRESENT COUNTY UNIT SYSTEM

| | <u>Population over 18 years old</u> | <u>Unit Votes</u> |
|---------------------------------|---|-----------------------|
| 8 Largest Counties | 1,023,667 | 48 |
| 11 Largest 4-unit counties | 320,559 | 44 |
| 38 Largest 2 unit counties | 370,159 | 76 |
| 18 Next Largest 2-unit counties | <u>119,147</u> | <u>36</u> |
| Total | 1,833,532 | 204 |
| 19 Smallest 4-unit counties | 324,256 | 76 |
| 65 Smallest 2-unit counties | <u>252,184</u> | <u>130</u> |
| Total | 576,440 | 206 |
| Grand Total | 2,409,972 | 410 |

Votes needed to get 206 unit votes in:
(plurality in each county)

| | | <u>% of total pop. over 18 yrs.</u> |
|------------|---------|-------------------------------------|
| 2 man race | 288,304 | 12% |
| 3 man race | 192,231 | 8% |
| 4 man race | 144,194 | 6% |
| 5 man race | 115,372 | 4.8% |

PERCENT OF VOTING STRENGTH REPRESENTED BY
POPULATION OVER 18 YEARS OLD NEEDED TO
ELECT A GOVERNOR OR SENATOR

PROPOSED 547-UNIT PLAN

| | <u>Population over 18 years old</u> | <u>Unit Votes</u> |
|----------------------|---|-----------------------|
| 29 Largest Counties | 1,544,028 | 243 |
| 4 - 3-unit counties | 47,669 | 12 |
| 9 - 2-unit counties | <u>78,181</u> | <u>18</u> |
| Total | 1,669,878 | 273 |
| 11 - 4-unit counties | 147,880 | 44 |
| 18 - 3-unit counties | 183,666 | 54 |
| 88 - 2-unit counties | <u>408,548</u> | <u>176</u> |
| | 740,094 | 274 |
| Grand Total | 2,409,972 | 547 |

Votes needed to get 274 unit votes in:
(plurality in each county)

| | | <u>% of total population over 18 years old</u> |
|------------|---------|--|
| 2-man race | 370,164 | 15.4% |
| 3-man race | 246,815 | 10.2% |
| 4-man race | 185,141 | 7.7% |
| 5-man race | 148,136 | 6.1% |

POPULATION OF VOTING AGE

| | 1960 Population 18 yrs of age & over | | Present Units | | 547 Unit Votes Governor's Proposal | | 545 Distributed "Equal Prop." | | No County Losing Votes "Equal Prop." | |
|---|---|---------------|---------------|---------------|--|---------------|----------------------------------|---------------|---|---------------|
| | Actual | % of Total | Number | % of Total | Number | % of Total | Number | % of Total | Number | % of Total |
| 14 Largest Counties (Fulton thru Clarke) | 1,213,809 | 50.4% | 72 | 17.6% | 170 | 31.1% | 217 | 39.8% | 318 | 44.7% |
| 24 Middle Counties (Walker thru Newton) | 454,673 | 18.8% | 96 | 23.4% | 109 | 19.9% | 86 | 15.8% | 126 | 17.7% |
| 121 Smallest Counties (Burke thru Echoles) | 741,490 | 30.8% | 242 | 59.0% | 268 | 49.0% | 242 | 44.4% | 267 | 37.6% |
| Total | 2,409,972 | 100.0% | 410 | 100.0% | 547 | 100.0% | 545 | 100.0% | 711 | 100.0% |

Source: Population from U. S. Census, Series P.C.U.) 12 B Ga.

Unit Votes: Present from worksheet on Governor's Proposal

Governor's Proposal " " " "

545 Distributed "Equal Prop." calculated by assigning each county a base of 2 unit votes and distributing extra 135 on "equal proportions.

No county losing unit votes: calculated by assigning each county a base of 2 unit votes and adding votes on the equal proportions system until all of present 4-unit counties receive 4 votes by this method.

EXHIBIT C

TOTAL POPULATION

| | 1960 Population | | Present Units | | 547 Votes Governor's Proposal | | 545 Distributed "Equal Pro" | | No County Losing Votes "Equal Pro" | |
|--|--------------------|------------|---------------|------------|-------------------------------------|---------------------------|--------------------------------|------------|---------------------------------------|------------|
| | Actual | % of Total | No. | % of Total | No. | % of Total | No. | % of Total | No. | % of Total |
| 15 Largest Counties (Fulton thru Walker) | 1,979,054 | 50.2% | 76 | 18.5% | 176 187 | 32.2% 34.3% | 222 | 40.7% | 325 | 45.7% |
| 23 Middle Counties (Gwinett thru Newton) | 701,210 | 17.8% | 92 | 22.5% | 103 446 | 18.8% 24.3% | 81 | 14.9% | 119 | 16.7% |
| 121 Smallest Counties (Burke through Echoles) | 1,262,852 | 32.0% | 242 | 59.0% | 268 242 | 49.0% 44.4% | 242 | 44.4% | 267 | 37.6% |
| Total | 3,943,116 | 100.0% | 410 | 100.0% | 547 545 | 100.0 | 545 | 100.0% | 711 | 100.0% |

EXHIBIT D

**COMPARISON OF DISPARITY RATIO DISTRIBUTION
U. S. ELECTORAL COLLEGE AND GEORGIA
COUNTY UNITS, PRESENT SYSTEM AND 547 PROPOSAL**

| "Disparity Ratio" Range | U. S. | | G E O R G I A | | | |
|----------------------------|------------------|---------------------|----------------------|-----------------------|--------------------|------------------------|
| | Electoral Votes | | Present 2-4-6 System | | Proposed 547 votes | |
| | No. of States | % of Tot. States | No. of Counties | % of Tot. Counties | No. of Counties | % of total counties |
| 0.10 - 0.499 | 0 | 0.0% | 6 | 3.8% | 0 | 0.0% |
| 0.50 - 0.749 | 0 | 0.0 | 2 | 1.2 | 9 | 5.7 |
| 0.75 - 0.849 | 0 | 0.0 | 5 | 3.1 | 5 | 3.1 |
| 0.85 - 0.949 | 12 | 24.0 | 7 | 4.4 | 5 | 3.1 |
| 0.95 - 1.049 | 9 | 18.0 | 7 | 4.4 | 10 | 6.3 |
| 1.05 - 1.149 | 10 | 20.0 | 16 | 10.1 | 22 | 13.8 |
| 1.15 - 1.999 | 10 | 20.0 | 55 | 34.6 | 71 | 44.7 |
| 2.00 - 2.999 | 6 | 12.0 | 34 | 21.4 | 26 | 16.4 |
| 3.00 - 3.999 | 2 | 4.0 | 16 | 10.1 | 4 | 2.5 |
| 4.00 and up | 1 | 2.0 | 11 | 6.9 | 7 | 4.4 |
| | 50 | 100.0% | 159 | 100.0% | 159 | 100.0% |

| | | | | | | |
|---|----|-----|----|-------|----|-------|
| 0.85 - 1.114 (within 15% of "parity") | 31 | 62% | 30 | 18.8% | 37 | 23.2% |
|---|----|-----|----|-------|----|-------|

Extreme Variations:

| | | | |
|--------------------------------|------|-------|-------|
| Lowest "Dis- parity Ratio" | 0.86 | 0.10 | 0.52 |
| Highest "Dis- parity Ratio" | 4.43 | 10.25 | 7.69 |
| Ratio highest to lowest | 5.15 | 102.5 | 14.79 |

Note: "Disparity Ratio" is percent of variation from average population per electoral vote for U. S. and average population percent vote for Ga. Works out same as "equality ratio".

COMPARISON OF NUMBER OF VOTES CAST IN PRIMARY ELECTION
WITH NUMBER CAST IN GENERAL ELECTION

[fol. 173]

| Year | Race | Number of Votes Cast | | Gen'l Election Vote of Primary Vote |
|------|---|----------------------|--|---|
| | | Primary | General Election | |
| 1930 | U.S. Senator-George, Russell | 190,090 | 47,367 | } for Senator 24.9% |
| | Governor-Carswell, Hardman, Holder Wood | 193,025 | 47,367 | |
| | Governor-Runoff-Hardman Holder | 141,065 | 47,367 | } 24.5% |
| | | | | |
| 1934 | U.S. Senator-Harris, Slaton | 208,264 | 55,607 | } for Senator 26.7% |
| | Governor-Carswell, Rivers Russell, Holder Perry | 206,061 | 55,607 | |
| | Governor-Runoff- Carswell, Russell | 146,662 | 55,607 | } 27.0% |
| | | | | |
| 1938 | Governor-Talmadge, Gillon, Pittman | 270,326 | 53,101 | 19.6% |
| 1942 | U.S. Senator-Camp, George, McRae, Talmadge | 321,311 | 70,339 | 21.9% |
| | Governor-Howell, Mangham, Rivers Wood | 316,337 | 70,919 | 22.4% |
| 1946 | U.S. Senator-Russell, Upshaw | 287,929 | 61,762 | 21.5% |
| | Governor-Arnall, Talmadge | 303,151 | 62,220 | 20.5% |
| 1950 | U.S. Senator-Rivers, Talmadge; Car- michael; O'Kelley | 691,881 | 145,403 | 21.0% |
| 1958 | Senator-George, Hyle, McLennon | 569,894 | 256,140 | 44.9%* |
| | Governor-Avery, Baker, Jenkins, Thompson Talmadge | 583,037 | Max. voting amend to extend County Unit to gen'l election polled total of 298,627 | 43.9% |
| 1958 | Governor-Vandiver, Abernathy, Bodenhamir | 620,409 | 168,514 | 27.2% |

Source: Georgia Official & Statistical Register
*Large turnout for amendment to extend County Unit to general election

**COUNTIES REPORTING MORE REGISTERED VOTERS IN 1960
THAN THEY HAD POPULATION OVER 18 YRS. OLD**

| <u>County</u> | <u>1960 Population Over 18 yrs. old</u> | <u>1960 Registered Voters</u> | <u>Reg. Voters as % of Pop. over 18 years old</u> |
|---------------|---|---------------------------------------|---|
| Dodge | 9,720 | 12,075 | 124% |
| Fannin | 8,142 | 8,452 | 104% |
| Franklin | 8,387 | 12,319 | 147% |
| Appling | 7,263 | 9,064 | 125% |
| Paulding | 7,956 | 8,169 | 103% |
| Telfair | 7,025 | 7,576 | 108% |
| Green | 6,563 | 7,501 | 114% |
| Evans | 4,216 | 4,462 | 106% |
| Candler | 3,914 | 4,185 | 107% |
| Union | 3,958 | 5,622 | 142% |
| Montgomery | 3,808 | 3,908 | 103% |
| Bryan | 3,400 | 3,551 | 104% |
| Towns | 2,943 | 3,514 | 119% |
| Long | 2,162 | 3,470 | 160% |
| Dawson | 2,149 | 2,183 | 102% |

Source: Population - U.S. Census PC(1) 12 B Ga.
Registered Voters

[fol. 175]

EXHIBIT H

RURAL POPULATION 1960

| | |
|--------|--------|
| COBB | 58,821 |
| DEKALB | 39,617 |
| FULTON | 34,542 |

Fulton ranks third in rural population. However, its farm population of 2,718 ranks well down in the state. The definition of Farm population was changed in the 1960 census which dropped Fulton's total considerably. According to the 1959 census of agriculture Fulton ranks 19th (1086) in the state in number of farms.

[fol. 176]

PLAINTIFFS' EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION

No. 7872

JAMES O'HEAR SANDERS,

Plaintiff

—VS—

JAMES H. GRAY, ET AL,

Defendants

AFFIDAVIT

GEORGIA
FULTON COUNTY

Personally appeared before me, the undersigned officer duly authorized to administer oaths, RICHARD N. HUBERT, who after being sworn says:

Deponent's name is Richard N. Hubert, a resident of DeKalb County, Georgia, residing at 1766 North Decatur Road, N. E., Atlanta, Georgia.

Your deponent is presently employed as the Research Director of the Georgia Tax Research Foundation, Inc., a non-profit corporation organized and existing under the laws of the State of Georgia.

Attached to this affidavit and made a part hereof is a schedule entitled "TAX REVENUE RECEIVED FROM, AND PAYMENTS MADE TO, EACH OF GEORGIA'S 159 COUNTIES, BY STATE TREASURY, Fiscal Year 1959-1960". Said attached schedule was prepared by the Georgia Tax Research Foundation, Inc. The data contained in said attached schedule is based upon figures contained in "Statistical Report of the Department of Revenue of the State of Georgia 1959-60" and "Report of State Auditor of Georgia, year ending June 30, 1960".

[fol. 177] The column headed "Payments To" appearing on said attached schedule reflect all payments by the State Treasury to each of the 159 counties for Confederate Pensions, Education, State Aid to Counties for Roads, Public Health and Public Welfare. The column headed "Excess" lists the amounts that those counties paid into the State Treasury above the amounts received back from it for the period indicated. There are 38 of these "Creditor" counties. The column headed "Deficiency" lists the amount of payments such counties received back from the State in excess of the amount they paid to the State Treasury for the period indicated. There are 121 of these "Debtor" counties.

This affidavit is given for the purpose of being used as evidence in the above styled case.

/s/ RICHARD N. HUBERT
RICHARD N. HUBERT

Sworn to and subscribed before me,
this 26 day of April, 1962.

/s/ MAURICE N. MALOOF
NOTARY PUBLIC.

[Seal]

GEORGIA'S 159 COUNTIES, BY STATE TREASURY,
Fiscal Year 1959 - 1960

Excess or Deficiency of
Receipts compared to Pay

| County | Received from | Payments To | Excess | Deficiency |
|------------------|------------------|----------------|------------|------------|
| 1. Appling | \$ 873,048 | \$1,316,666 | -- | \$ 441,618 |
| 2. Atkinson | 364,641 | 830,778 | -- | 466,137 |
| 3. Bacon | 730,799 | 909,463 | -- | 178,664 |
| 4. Baker | 200,892 | 593,863 | -- | 392,971 |
| 5. Baldwin | 1,609,906 | 1,188,259 | 421,647 | -- |
| 6. Banks | 197,341 | 657,879 | -- | 460,538 |
| 7. Barrow | 1,110,428 | 1,476,093 | -- | 365,665 |
| 8. Bartow | 2,302,049 | 1,810,479 | 491,570 | -- |
| 9. Ben Hill | 1,083,414 | 1,116,606 | -- | 33,192 |
| 10. Berrien | 996,100 | 964,023 | 32,077 | -- |
| 11. Bibb | 13,129,602 | 6,763,839 | 6,365,763 | -- |
| 12. Blount | 647,322 | 777,363 | -- | 129,041 |
| 13. Brantley | 479,374 | 624,733 | -- | 145,359 |
| 14. Brooks | 923,010 | 1,419,301 | -- | 496,291 |
| 15. Bryan | 511,133 | 633,990 | -- | 122,857 |
| 16. Bulloch | 1,877,293 | 2,003,963 | -- | 126,670 |
| 17. Burke | 1,133,829 | 1,807,262 | -- | 673,433 |
| 18. Butts | 593,019 | 700,904 | -- | 107,885 |
| 19. Calhoun | 449,288 | 732,982 | -- | 283,694 |
| 20. Camden | 993,104 | 732,893 | 260,211 | -- |
| 21. Candler | 532,371 | 716,804 | -- | 184,433 |
| 22. Carroll | 2,580,071 | 2,763,643 | -- | 183,572 |
| 23. Catoosa | 948,803 | 1,103,100 | -- | 154,297 |
| 24. Chatahoochee | 830,116 | 369,380 | 460,736 | -- |
| 25. Chatam | 19,741,104 | 8,276,673 | 11,464,431 | -- |
| 26. Chattooga | 481,292 | 172,362 | 308,930 | -- |
| 27. Chatham | 1,304,814 | 1,469,860 | -- | 165,046 |
| 28. Cherokee | 1,654,007 | 1,671,313 | -- | 17,306 |
| 29. Charlton | 4,101,074 | 2,100,146 | 2,000,928 | -- |
| 30. Clay | 238,341 | 437,294 | -- | 198,953 |
| 31. Clayton | 2,330,643 | 2,087,381 | 243,262 | -- |
| 32. Clinch | 537,142 | 607,437 | -- | 69,295 |
| 33. Cobb | 8,441,674 | 4,767,343 | 3,674,331 | -- |
| 34. Coffee | 1,572,389 | 1,844,063 | -- | 271,674 |
| 35. Colquhoun | 2,634,314 | 2,346,982 | 287,332 | -- |
| 36. Columbia | 569,298 | 1,130,934 | -- | 561,636 |

[fol. 178]

| | County | Received from | Payments to | Excess | Deficiency |
|-----|------------|------------------|----------------|------------|------------|
| 37. | Cook | 880,858 | 1,077,540 | -- | 196,682 |
| 38. | Covata | 2,510,607 | 2,147,388 | 363,219 | -- |
| 39. | Crawford | 386,495 | 582,401 | -- | 195,906 |
| 40. | Crisp | 1,517,700 | 1,573,607 | -- | 55,907 |
| 41. | Dade | 307,214 | 670,437 | -- | 163,223 |
| 42. | Dawson | 195,998 | 421,706 | -- | 225,708 |
| 43. | DeCATUR | 1,773,698 | 1,841,842 | -- | 68,144 |
| 44. | DeKalb | 17,168,384 | 7,478,401 | 9,690,183 | -- |
| 45. | Dodge | 1,062,405 | 1,690,610 | -- | 628,205 |
| 46. | Dooly | 786,419 | 1,883,267 | -- | 1,096,848 |
| 47. | Dougherty | 6,324,309 | 3,442,272 | 2,882,237 | -- |
| 48. | Douglas | 919,444 | 1,155,077 | -- | 235,633 |
| 49. | Durley | 881,480 | 1,410,268 | -- | 528,788 |
| 50. | Echols | 82,163 | 279,620 | -- | 197,457 |
| 51. | Effingham | 478,286 | 1,008,327 | -- | 530,041 |
| 52. | Elbert | 1,302,315 | 1,398,164 | -- | 295,849 |
| 53. | Emmanuel | 1,409,383 | 1,840,282 | -- | 430,899 |
| 54. | Evans | 769,191 | 629,709 | 139,482 | -- |
| 55. | Fannin | 782,642 | 1,112,719 | -- | 330,077 |
| 56. | Fayette | 893,903 | 740,235 | -- | 244,332 |
| 57. | Floyd | 3,643,911 | 3,493,774 | 1,172,137 | -- |
| 58. | Forsyth | 779,725 | 971,268 | -- | 191,543 |
| 59. | Franklin | 922,445 | 1,378,838 | -- | 456,393 |
| 60. | Fulton | 81,771,423 | 22,361,693 | 59,409,730 | -- |
| 61. | Gilmer | 379,062 | 839,927 | -- | 280,865 |
| 62. | Glascock | 143,338 | 397,432 | -- | 252,074 |
| 63. | Glynn | 3,641,128 | 1,808,812 | 1,832,316 | -- |
| 64. | Gordon | 1,397,592 | 1,358,449 | 39,143 | -- |
| 65. | Grady | 1,199,939 | 1,453,511 | -- | 293,572 |
| 66. | Greene | 619,643 | 1,119,060 | -- | 499,417 |
| 67. | Gwinnett | 2,798,807 | 2,976,775 | -- | 178,768 |
| 68. | Habersham | 1,443,391 | 1,443,384 | 7 | -- |
| 69. | Hall | 4,803,401 | 2,944,742 | 1,858,659 | -- |
| 70. | Hancock | 469,884 | 948,536 | -- | 478,652 |
| 71. | Haralson | 1,111,257 | 1,237,989 | -- | 126,732 |
| 72. | Harris | 843,868 | 957,602 | -- | 315,734 |
| 73. | Hart | 999,016 | 1,443,382 | -- | 444,366 |
| 74. | Heard | 251,748 | 675,132 | -- | 423,384 |
| 75. | Henry | 997,370 | 1,300,251 | -- | 302,881 |
| 76. | Houston | 2,888,181 | 1,938,269 | 263,932 | -- |
| 77. | Irwin | 696,315 | 939,263 | -- | 244,948 |
| 78. | Jackson | 1,376,612 | 1,531,212 | -- | 154,600 |
| 79. | Jasper | 337,479 | 663,612 | -- | 326,133 |
| 80. | Jeff Davis | 537,602 | 837,838 | -- | 280,236 |
| 81. | Jefferson | 1,082,601 | 1,724,413 | -- | 641,812 |
| 82. | Jenkins | 621,642 | 798,005 | -- | 176,363 |
| 83. | Johnson | 452,395 | 887,145 | -- | 434,750 |
| 84. | Jones | 489,742 | 713,731 | -- | 223,989 |
| 85. | Lamar | 787,836 | 834,489 | -- | 66,653 |

| | | | | | |
|------|------------|------------|-----------|-----------|---------|
| | | 304,009 | 304,301 | | |
| | | 2,472,043 | 2,779,651 | | |
| | | 250,124 | 597,114 | | |
| | | 803,326 | 1,192,632 | | |
| | Lincoln | 307,429 | 594,709 | -- | 267,100 |
| 91. | Long | 284,637 | 432,533 | -- | 147,000 |
| 92. | Lowndes | 3,935,383 | 3,162,146 | 773,237 | -- |
| 93. | Lumpkin | 427,098 | 655,889 | -- | 228,791 |
| 94. | Macon | 754,472 | 1,221,491 | -- | 467,919 |
| 95. | Madison | 488,961 | 1,222,992 | -- | 734,031 |
| 96. | Marion | 291,930 | 714,781 | -- | 422,851 |
| 97. | McDuffie | 1,181,101 | 1,102,435 | 78,666 | -- |
| 98. | McIntosh | 430,830 | 637,423 | -- | 200,591 |
| 99. | Meriwether | 1,107,847 | 1,628,600 | -- | 520,753 |
| 100. | Miller | 489,719 | 763,751 | -- | 274,032 |
| 101. | Mitchell | 1,396,274 | 1,867,866 | -- | 511,590 |
| 102. | Monroe | 692,489 | 821,331 | -- | 128,842 |
| 103. | Montgomery | 311,463 | 717,787 | -- | 406,324 |
| 104. | Morgan | 627,803 | 1,038,453 | -- | 410,650 |
| 105. | Murray | 715,189 | 769,930 | -- | 54,741 |
| 106. | Muscogee | 12,351,852 | 6,101,018 | 6,250,834 | -- |
| 107. | Newton | 1,287,518 | 1,412,856 | -- | 125,330 |
| 108. | Oconee | 277,889 | 570,570 | -- | 292,781 |
| 109. | Oglethorpe | 329,776 | 855,370 | -- | 525,594 |
| 110. | Paulding | 683,417 | 1,146,804 | -- | 462,387 |
| 111. | Peach | 1,112,983 | 1,026,556 | 86,427 | -- |
| 112. | Pickens | 640,706 | 679,539 | -- | 38,837 |
| 113. | Pierce | 631,572 | 906,100 | -- | 274,520 |
| 114. | Pike | 270,814 | 768,115 | -- | 497,301 |
| 115. | Polk | 1,426,367 | 2,028,839 | -- | 198,472 |
| 116. | Polk | 725,072 | 821,700 | -- | 96,300 |
| 117. | Putnam | 321,530 | 770,750 | -- | 249,226 |
| 118. | Quitman | 106,985 | 349,633 | -- | 242,640 |
| 119. | Rabun | 644,297 | 803,461 | -- | 159,164 |
| 120. | Randolph | 725,271 | 970,435 | -- | 245,164 |
| 121. | Richmond | 10,755,115 | 5,647,804 | 5,111,311 | -- |
| 122. | Rockdale | 612,157 | 730,109 | -- | 117,952 |
| 123. | Schley | 189,916 | 373,543 | -- | 183,627 |
| 124. | Screven | 1,034,667 | 1,453,940 | -- | 417,301 |
| 125. | Seminole | 601,198 | 676,675 | -- | 75,477 |
| 126. | Spalding | 2,283,046 | 2,195,835 | 787,211 | -- |
| 127. | Stephens | 1,373,138 | 1,507,389 | -- | 134,451 |
| 128. | Stewart | 490,990 | 712,818 | -- | 281,821 |
| 129. | Sumter | 1,719,952 | 1,765,802 | -- | 45,840 |
| 130. | Talbot | 321,307 | 604,378 | -- | 359,991 |
| 131. | Taliaferro | 157,609 | 434,303 | -- | 281,094 |
| 132. | Tattnall | 974,610 | 1,289,868 | -- | 315,258 |
| 133. | Taylor | 302,133 | 923,193 | -- | 381,002 |

| <u>County</u> | <u>Received from</u> | <u>Payments to</u> | <u>Excess</u> | <u>Deficiency</u> |
|-----------------|----------------------|--------------------|---------------|-------------------|
| 134. Telfair | 942,682 | 1,404,442 | -- | 461,760 |
| 135. Terrell | 828,071 | 1,218,770 | -- | 390,699 |
| 136. Thomas | 2,694,890 | 2,575,254 | 119,636 | -- |
| 137. Tift | 1,847,240 | 1,588,473 | 258,767 | -- |
| 138. Toombs | 1,547,668 | 1,370,669 | 176,999 | -- |
| 139. Towns | 318,976 | 546,965 | -- | 327,989 |
| 140. Treutlen | 315,532 | 716,052 | -- | 400,520 |
| 141. Troup | 3,625,619 | 3,439,164 | 186,455 | -- |
| 142. Turner | 618,461 | 807,645 | -- | 189,184 |
| 143. Twiggs | 333,877 | 765,566 | -- | 431,689 |
| 144. Union | 322,835 | 698,144 | -- | 375,309 |
| 145. Upson | 2,028,399 | 1,822,562 | 205,837 | -- |
| 146. Walker | 2,798,542 | 2,603,035 | 195,507 | -- |
| 147. Walton | 1,380,948 | 1,599,157 | -- | 218,209 |
| 148. Ware | 2,945,693 | 2,283,654 | 662,039 | -- |
| 149. Warren | 383,345 | 749,817 | -- | 366,472 |
| 150. Washington | 1,123,039 | 1,756,868 | -- | 633,829 |
| 151. Wayne | 1,654,547 | 1,400,813 | 253,734 | -- |
| 152. Webster | 146,248 | 344,097 | -- | 197,849 |
| 153. Wheeler | 268,072 | 763,741 | -- | 495,669 |
| 154. White | 390,249 | 664,665 | -- | 274,416 |
| 155. Whitfield | 4,009,500 | 2,532,331 | 1,477,169 | -- |
| 156. Wilcox | 496,056 | 942,335 | -- | 446,279 |
| 157. Wilkes | 793,061 | 1,138,770 | -- | 345,709 |
| 158. Wilkinson | 495,517 | 823,425 | -- | 327,908 |
| 159. Worth | 951,941 | 1,483,410 | -- | 531,469 |

NOTE: All figures are rounded to the nearest dollar.

The column headed "Received from" reflects all taxes paid into the State Treasury by the 159 counties. This data was verified by Schedule No. 1, "Statistical Report of the Department of Revenue of the State of Georgia", 1959-1960.

The column headed "Payments to" reflect all payments by the State Treasury to each of the 159 counties for: Confederate pensions, Education, State Aid to Counties for Roads, Public Health, and Public Welfare. These were direct payments to the counties for county services. This data was verified by "Report of State Auditor of Georgia, year ending June 30, 1960".

The column headed "Excess" lists the amounts that these counties paid into the State Treasury above the amounts received back from it. These have been known as "Creditor" counties. There are 38 of them.

The column headed "Deficiency" lists the amounts of payments such counties receive back from the State in excess of the amount they pay to the State Treasury. They have been known as "Debtor Counties". There are 121 of them.

[fol. 182]

PLAINTIFFS' EXHIBIT 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION

No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, PHILIP HAMMER, who after being sworn, deposes and says:

My name is Philip Hammer. I am a registered voter and homeowner in Fulton County and am temporarily maintaining a residence in Washington, D. C. where the headquarters of my firm are located.

I am an economist and president of my own firm of economic consultants, Hammer & Company Associates, Inc., a Georgia corporation with offices in Atlanta and Washington. My field is development economics which is concerned primarily with the location of industrial and commercial enterprises, the feasibility of private and public investments in new income-producing facilities, and the economics of urban and metropolitan area growth. I have personally made economic studies in every major city and in every section of Georgia, and my studies have been instrumental in stimulating and directing millions of dollars worth of public and private investment in this State. As a consultant to private business and local government,

[fol. 183] I have objectively studied the economy of the State and its sub-regions. I have also made economic studies in major cities and metropolitan areas in other parts of the United States and am currently engaged in development studies in twenty-two cities in twelve states. My clients include manufacturers, retailers, private investors, insurance companies, banks, savings and loan associations, public utilities, real estate developers and public agencies.

I graduated from the University of North Carolina in Political Science in 1936 and spent 2 years at Harvard University studying economics, first as a Rockefeller Fellow and later as a Littauer Fellow in Public Administration. I served one year as staff assistant to the late Senator Robert M. LaFollette of Wisconsin and two years as administrative assistant to former Governor Herbert H. Lehman of New York in the State Department. I was director for two years of the Program Analysis Staff of the Farm Security Administration (now the Farmers Home Administration) and made many official trips to Georgia in that capacity. I have been director of the Metropolitan Planning Commission of Atlanta and have been president of my own economic consulting firm since February, 1954.

First, I would like to present a set of observations, and next I would like to set forth some factual information on Georgia trends, bearing upon the case at hand.

My observations concern the increased importance of the responsible role of state governments. The nationwide shift to urban areas is rapid and continuous. For sound economic reasons, industry, commerce and population will be increasingly concentrated in the nation's urban and metropolitan centers. In these areas of tremendous growth and [fol. 184] development, the problems of government have already become acutely serious and promise to become more so in the days ahead—in finance, in the provisions of the necessary services and in the efficiency of administration.

I strongly believe that the only alternative to increasing Federal intervention in the affairs of urban communities is stronger, more urban-minded and more efficient state governments. Already the vacuums created by state in-

difference to urban problems has brought the Federal Government heavily into local affairs. Through the incapacity and unwillingness of State governments to concern themselves with the problems of the local political subdivisions that they have created, both local and state authorities are losing control over their own affairs, and the Federal power and responsibility is rapidly increasing.

In the State of Georgia, the rapidly-growing urban and industrial economy provides no justification for the system of rural control that underlies the state government. On the basis of my studies, I would like to present some factual information showing the sharp disparity between the patterns of economic development and political responsibility with which we are faced.

In 1956, the eight 6-unit counties in Georgia—with only 12% of the unit votes—accounted for nearly 53% of the \$5.2 billion dollars of personal income in the state. The 2-unit counties with 59% of the unit votes account for less than one-fourth of the income. Moreover, the proportion of the State's personal income concentrated in the 6-unit—and also in the 4-unit—counties has been steadily increasing.

The following table shows the distribution of income [fol. 185] between the three groups of counties in pre-war 1939 and in 1956, the most recent year for which accurate data are available.

TABLE 1. *Distribution of Personal Income,
State of Georgia 1939 and 1956.*

| | Percent of Unit Votes | Percent of Income | | Gain in Income |
|-----------------|--------------------------|-------------------|--------|----------------|
| | | 1939 | 1956 | 1939-56 |
| 6-unit counties | 11.7% | 42.3% | 52.6% | 574% |
| 4-unit counties | 29.3 | 21.6 | 23.9 | 498% |
| 2-unit counties | 59.0 | 36.1 | 23.5 | 253% |
| State as whole | 100.0% | 100.0% | 100.0% | 442% |

The above figures are given in terms of current, not constant dollars and they reflect a substantial amount of inflation between 1939 and 1956. Even in terms of constant dollars with the effects of inflation eliminated, however,

the relative proportions among the three groups of counties would remain the same.

Another clear index showing the disparity between unit votes and economic capacity is the figure given by combining two major production factors—wages paid to production workers in manufacturing and net value of farm products sold. These factors account for only a part of total income, but they provide a good index of basic economic capacity. In 1954, nearly half of the \$822 million in combined factory wages and farm receipts in Georgia was accounted for by the 6-unit counties.

The distribution of these receipts by the three groups of counties for the years 1929 and 1954 is shown below:

[fol. 186]

TABLE 2. *Distribution of Factory Wages and Net Value of Farm Products Sold, Combined State of Georgia 1929 and 1954*

| | Percent of Unit Votes | Percent of Receipts 1929 | Percent of Receipts 1954 | Gain in Receipts 1929-54 |
|-----------------|--------------------------|-----------------------------|-----------------------------|-----------------------------|
| 6-unit counties | 11.7% | 26.7% | 45.6% | 565% |
| 4-unit counties | 29.3 | 28.1 | 31.1 | 330% |
| 2-unit counties | 59.0 | 45.2 | 23.3 | 101% |
| State as whole | 100.0% | 100.0% | 100.0% | 294% |

As shown above, combined factory and farm receipts in the 2-unit counties doubled in the twenty-five year period between 1929 and 1954, primarily as a result of gains in the dollar value of farm products sold. However, the heavy industrialization in the 6-unit and 4-unit counties brought about much greater increases in the economic returns of those areas.

Another index of economic wealth and productivity is taxable property values, both real and property. Although there are sharp differences in assessment procedures among the counties, property values reflect in part the strength of the local economy. In 1959, the last year for which accurate figures are available, the 6-unit counties accounted for nearly two-thirds of the taxable property values of the State of Georgia. There was an increase in the proportion

of the total represented by these counties in the period between 1940 and 1959:

TABLE 3. *Distribution of Taxable Property Values, State of Georgia, 1940-59*

| | <i>Percent of Unit Votes</i> | <i>Percent of Values</i> | | <i>Gain in Values, 1940-59</i> |
|-----------------|------------------------------|--------------------------|-------------|--------------------------------|
| | | <i>1940</i> | <i>1959</i> | |
| 6-unit counties | 11.7% | 58.2% | 64.8% | 257% |
| 4-unit counties | 29.3 | 20.1 | 18.5 | 197% |
| 2-unit counties | 59.0 | 21.7 | 16.7 | 145% |
| State as whole | 100.0% | 100.0% | 100.0% | 220% |

[fol. 187] One further set of figures is illuminating. In 1960, the average number of years completed in school of persons 25 years of age or over was distinctly higher in the 6-unit and 4-unit counties taken as groups than in the 2-unit counties. The figures are shown below:

TABLE 4. *Median Number of School Years Completed by Persons 25 Years or Over, State of Georgia, 1960*

| | |
|-----------------|-------|
| 6-unit counties | 10.66 |
| 4-unit counties | 8.69 |
| 2-unit counties | 8.09 |
| State as whole | 9.34 |

Every index shows the increasing strength of the urban economies of Georgia and every comparison highlights the disparity in geographical distribution of economic capacity and political control.

This affidavit is given for the purpose of being used as evidence in the above case.

/s/ PHILIP G. HAMMER

Sworn to and subscribed before me
this 25 day of April, 1962

/s/ ANN McMILLAN

Notary Public

Notary Public, Georgia, State at Large

My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I certify I have served a copy of the within affidavit on counsel opposite by mailing a copy of same. This 26 April, 1962, Morris B. Abram, counsel for plaintiff.]



I, Ben M. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify, that the two pages of
of photographed matter hereto attached contain a true and correct
copy of the number of registered voters for the years 1954, 1956,
1958 and 1960 as appears in the 1960 files in the office of Secretary
of State.

[fol. 188]

PLAINTIFFS' EXHIBIT 15

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of my office, at the Capitol, in the City of Atlanta, this
26th day of April, in the year of our Lord
One Thousand Nine Hundred and Sixty-Two
and of the Independence of the United States of America the
One Hundred and Eighty-Sixth.

Ben M. Fortson Jr.
SECRETARY OF STATE.

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| COUNTY | COUNTY | 1920 | 1920 | 1920 | 1920 |
|--------|--------|--------|-------|-------|-------|
| 1 | ADAMS | Bacon | 8,241 | 8,219 | 7,772 |
| 2 | ALBANY | Palmer | 3,335 | 4,101 | 4,755 |
| 3 | ALCOCK | Ala | 3,328 | 3,997 | 4,285 |
| 4 | ALLEN | North | 1,341 | 1,771 | 2,049 |
| 5 | ALLEN | North | 9,131 | 9,131 | 9,131 |
| 6 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 7 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 8 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 9 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 10 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 11 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 12 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 13 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 14 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 15 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 16 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 17 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 18 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 19 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 20 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 21 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 22 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 23 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 24 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 25 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 26 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 27 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 28 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 29 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 30 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 31 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 32 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 33 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 34 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 35 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 36 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 37 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 38 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 39 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 40 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 41 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 42 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 43 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 44 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 45 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 46 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 47 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 48 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 49 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 50 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 51 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 52 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 53 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 54 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 55 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 56 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 57 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 58 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 59 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 60 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 61 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 62 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 63 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 64 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 65 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 66 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 67 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 68 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 69 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 70 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 71 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 72 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 73 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 74 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 75 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 76 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 77 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 78 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 79 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 80 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 81 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 82 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 83 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 84 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 85 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 86 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 87 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 88 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 89 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 90 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 91 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 92 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 93 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 94 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 95 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 96 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 97 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 98 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 99 | ALLEN | North | 1,118 | 9,750 | 9,750 |
| 100 | ALLEN | North | 1,118 | 9,750 | 9,750 |

COUNTIES AND COUNTY SEATED IN GEORGIA

| COUNTY | COUNTY SEATED | 1934 | 1935 | 1936 | 1937 |
|--------------|----------------|-----------|-----------|-----------|-----------|
| 2 JEFFERSON | Louisville | 8,253 | 8,254 | 8,284 | 8,321 |
| 2 JENKINS | Williston | 3,240 | 3,269 | 3,296 | 3,341 |
| 2 JOHNSON | Wrightsville | 3,309 | 3,323 | 3,373 | 3,410 |
| 2 JONES | Gray | 2,419 | 2,379 | 2,659 | 2,643 |
| 2 LAMAR | Barnesville | 3,048 | 3,183 | 3,200 | 3,278 |
| 2 LANIER | Lakeland | 2,274 | 2,479 | 2,344 | 2,460 |
| 4 LAURENS | Dublin | 18,431 | 18,972 | 18,745 | 18,829 |
| 2 LEE | Laurensburg | 1,203 | 1,212 | 1,310 | 1,239 |
| 2 LIBERTY | Minersville | 3,928 | 4,329 | 4,120 | 4,014 |
| 2 LINCOLN | Lincolnton | 2,292 | 1,661 | 2,444 | 2,723 |
| 2 LONG | Ludowici | 2,502 | 2,242 | | 2,670 |
| 4 LOWMEDES | Valdosta | 13,222 | 13,001 | 14,564 | 14,969 |
| 2 LUMPKIN | Dahlgren | 4,933 | 4,204 | 3,993 | 2,747 |
| 2 MACON | Oglethorpe | 3,124 | 3,351 | 3,202 | 3,470 |
| 2 MADISON | Danielsville | 3,528 | 4,731 | 4,643 | 4,807 |
| 2 MARION | Buena Vista | 1,396 | 1,406 | 1,382 | 1,563 |
| 2 McDUFFIE | Thomson | 4,200 | 4,338 | 4,468 | 4,297 |
| 2 McINTOSH | Darien | 2,785 | 2,667 | 2,615 | 2,890 |
| 4 MERIWETHER | Greenville | 8,013 | 8,574 | 8,384 | 8,458 |
| 2 MILLER | Colquitt | 3,277 | 3,499 | 3,363 | 3,193 |
| 4 MITCHELL | Camilla | 8,833 | 7,781 | 7,673 | 5,326 |
| 2 MONROE | Forsyth | 4,311 | 3,794 | 4,084 | 3,801 |
| 2 MONTGOMERY | Mt. Vernon | 1,435 | 1,163 | 1,320 | 1,908 |
| 2 MORGAN | Medison | 4,212 | 3,354 | 3,353 | 3,820 |
| 2 MURRAY | Chatsworth | 4,458 | 4,831 | 4,992 | 5,412 |
| 6 MUSCOGEE | Columbus | 35,000 | 29,982 | 28,588 | 28,542 |
| 2 NEWTON | Covington | 9,463 | 10,263 | 10,963 | 10,647 |
| 2 OCONEE | Walthamville | 3,348 | 3,730 | 3,594 | 2,275 |
| 2 OGLETHORPE | Lexington | 2,810 | 3,206 | 3,157 | 3,058 |
| 2 PAULDING | Dallas | 8,068 | 8,149 | 8,286 | 8,169 |
| 2 PEACH | Ft. Valley | 2,058 | 3,124 | 3,218 | 3,198 |
| 2 PICKENS | Jasper | 2,932 | 3,338 | 4,424 | 4,840 |
| 2 PIERCE | Blackshear | 3,500 | 3,501 | 3,740 | 4,234 |
| 2 PIKE | Zebulon | 2,440 | 3,048 | 3,013 | 3,320 |
| 4 POLK | Cadotown | 16,192 | 15,840 | 11,004 | 11,571 |
| 2 PULASKI | Hawkinsville | 2,848 | 3,323 | 3,003 | 3,355 |
| 2 PUTNAM | Estonton | 2,737 | 3,056 | 2,934 | 3,173 |
| 2 QUITMAN | Georgetown | 722 | 808 | 764 | 804 |
| 2 RALPH | Clayton | 4,193 | 4,764 | 4,878 | 5,243 |
| 2 RANDOLPH | Cumtort | 3,214 | 3,066 | 3,078 | 2,856 |
| 6 RICHMOND | Augusta | 26,588 | 28,620 | 29,080 | 28,867 |
| 2 ROCKDALE | Conyers | 1,622 | 1,064 | 1,064 | 1,647 |
| 2 SCHLEY | Ellaville | 1,058 | 1,114 | 1,144 | 1,027 |
| 2 SCREVEN | Sylvania | 3,608 | 3,830 | 3,562 | 4,027 |
| 2 SEMINOLE | Donelsonville | 3,212 | 3,364 | 3,201 | 3,500 |
| 4 SPALDING | Griffin | 10,742 | 8,228 | 8,849 | 10,272 |
| 2 STEPHENS | Yocco | 2,224 | 2,262 | 3,682 | 3,805 |
| 2 STEWART | Lumpkin | 2,154 | 2,262 | 3,682 | 3,805 |
| 4 SUMTER | Americus | 8,867 | 8,068 | 8,467 | 8,035 |
| 2 TALBOT | Talbott | 1,472 | 1,622 | 1,667 | 1,799 |
| 2 TALLADEGA | Crawfordville | 1,603 | 2,007 | 1,619 | 1,840 |
| 2 TATTNALL | Bondville | 8,794 | 10,004 | 9,904 | 8,417 |
| 2 TAYLOR | Butler | 3,180 | 3,449 | 3,450 | 3,294 |
| 2 TELFAIR | McRae | 8,920 | 7,558 | 7,558 | 7,574 |
| 2 TERRELL | Dawson | 3,774 | 3,391 | 2,858 | 2,953 |
| 2 THOMAS | Thomasville | 9,982 | 10,344 | 10,001 | 9,534 |
| 4 TIFT | Tifton | 7,600 | 8,768 | 7,294 | 8,121 |
| 2 TOOMBS | Lyons | 3,528 | 4,517 | 5,713 | 6,511 |
| 2 TOWNS | Hiwassee | 2,400 | 2,123 | | 2,514 |
| 2 TREUTLEN | Septon | 1,220 | 3,559 | 2,552 | 2,883 |
| 4 TROUP | LeGrange | 16,704 | 16,865 | 15,940 | 15,681 |
| 2 TURNER | Auburn | 1,807 | 4,667 | 4,367 | 3,994 |
| 2 TWIGGS | Jeffersonville | 2,867 | 2,940 | 2,863 | 1,924 |
| 2 UNION | Blairville | 4,693 | 4,872 | 4,944 | 5,442 |
| 4 UPSON | Thomaston | 7,523 | 6,467 | 5,903 | 6,123 |
| 4 WALKER | LaFayette | 22,802 | 23,354 | 24,431 | 25,061 |
| 2 WALTON | Monroe | 7,310 | 8,130 | 7,478 | 8,583 |
| 4 WARE | Waycross | 17,748 | 13,338 | 13,734 | 14,754 |
| 2 WARREN | Warrenton | 2,074 | 2,304 | 2,201 | 1,931 |
| 2 WASHINGTON | Sandersville | 2,417 | 2,543 | 2,400 | 2,841 |
| 2 WAYNE | Jasp | 4,950 | 4,748 | 4,370 | 3,705 |
| 2 WEBSTER | Proctor | 1,281 | 908 | 924 | 800 |
| 2 WHEELER | Alamo | 3,668 | 3,482 | 3,382 | 2,774 |
| 2 WHITE | Cleveland | 3,963 | 4,119 | 4,121 | 4,642 |
| 4 WHITFIELD | Dalton | 21,000 | 18,338 | 18,777 | 17,754 |
| 2 WILCOX | Abbeville | 4,383 | 3,478 | 3,289 | 3,967 |
| 2 WILKES | Washington | 3,228 | 3,780 | 3,454 | 3,779 |
| 2 WILKINSON | Irwinton | 2,171 | 3,422 | 3,432 | 3,432 |
| 2 WORTH | Sylvester | 1,883 | 4,118 | 4,181 | 4,311 |
| TOTALS | | 1,873,903 | 1,810,386 | 1,804,021 | 1,803,139 |



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PLAINTIFFS' EXHIBIT 16

I, Ben M. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that the one page of photographed matter hereto attached contains a true and correct copy of the number of registered voters for the year 1958 as the same appears in the 1958 files in the office of Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of April, in the year of our Lord One Thousand Nine Hundred and Sixty-Two and of the Independence of the United States of America the One Hundred and Eighty-Sixth.



Ben M. Fortson Jr.

SECRETARY OF STATE.

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COUNTIES AND COUNTY SITES IN GEORGIA

Page 1.

| UNIT | VOTE | COUNTY | COURTHOUSE | White | Colored | Total | | |
|------|------|---------------|---------------|--------|---------|--------|---|-----------------|
| 2 | | APPLING | Baxley | 6,612 | 1,140 | 7,752 | ✓ | |
| 2 | | ATKINSON | Pearson | 4,164 | 797 | 4,961 | ✓ | |
| 2 | | BACON | Alma | 6,105 | 22 | 6,127 | ✓ | |
| 2 | | BAKER | Newton | 1,670 | 0 | 1,670 | ✓ | |
| 4 | | BALDWIN | Milledgeville | 7,675 | 2,618 | 10,293 | ✓ | |
| 2 | | BANKS | Homer | 4,420 | 44 | 4,464 | ✓ | |
| 2 | | BARROW | Winder | 5,858 | 312 | 6,160 | ✓ | |
| 4 | | BARTOW | Cartersville | 11,239 | 1,203 | 12,442 | ✓ | |
| 2 | | BEN HILL | Fitzgerald | 3,797 | 930 | 4,727 | ✓ | |
| 2 | | BERRIEN | Nashville | 4,177 | 403 | 4,580 | ✓ | |
| 6 | | BIBB | Macon | 26,124 | 4,913 | 31,037 | ✓ | |
| 2 | | BLECKLEY | Cochran | 3,346 | 45 | 3,391 | ✓ | |
| 2 | | BRANTLEY | Nahunta | 3,767 | 226 | 3,993 | ✓ | |
| 2 | | BROOKS | Quitman | 4,321 | 695 | 5,016 | ✓ | |
| 2 | | BRYAN | Pembroke | 1,972 | 817 | 2,789 | ✓ | |
| 4 | | BULLOCH | Statesboro | 7,899 | 1,390 | 9,289 | ✓ | |
| 4 | | BURKE | Waynesboro | 3,664 | 427 | 4,091 | ✓ | |
| 2 | | BUTTS | Jackson | 3,810 | 1,437 | 5,247 | ✓ | |
| 2 | | CALHOUN | Morgan | 1,682 | 132 | 1,814 | ✓ | |
| 2 | | CAMDEN | Woodbine | 2,606 | 1,385 | 3,991 | ✓ | |
| 2 | | CANDLER | Metter | 3,195 | 1,174 | 4,369 | ✓ | |
| 4 | | CARROLL | Carrollton | 13,680 | 925 | 14,605 | ✓ | |
| 2 | | CATOOSA | Ringgold | 9,938 | 70 | 10,008 | ✓ | |
| 2 | | CHARLTON | Folkston | 2,293 | 40 | 2,333 | ✓ | |
| 6 | | CHATHAM | Savannah | 36,943 | 9,250 | 46,193 | ✓ | |
| 2 | | CHATTAHOOCHEE | Cusseta | 284 | 8 | 292 | ✓ | |
| 4 | | CHATTOOGA | Summerville | 11,250 | 1,011 | 12,261 | ✓ | |
| 2 | | CHEROKEE | Canton | 12,879 | 190 | 13,069 | ✓ | 12,087 - 13,015 |
| 4 | | CLARKE | Athens | 14,255 | 3,136 | 17,391 | ✓ | |
| 2 | | CLAY | Ft. Gaines | 1,013 | 94 | 1,107 | ✓ | |
| 4 | | CLAYTON | Jonesboro | 11,441 | 477 | 11,918 | ✓ | |
| 2 | | CLINCH | Homerville | 2,429 | 319 | 2,748 | ✓ | |
| 6 | | COBB | Marietta | 28,134 | 1,908 | 30,042 | ✓ | |
| 4 | | COFFEE | Douglas | 10,058 | 942 | 11,000 | ✓ | |
| 4 | | COLQUITT | Moultrie | 13,000 | 965 | 13,965 | ✓ | |
| 2 | | COLUMBIA | Appling | 3,423 | 510 | 3,933 | ✓ | |
| 2 | | COOK | Adel | 6,000 | 500 | 6,500 | ✓ | |
| 4 | | COWETA | Newnan | 11,597 | 1,647 | 13,244 | ✓ | |
| 2 | | CRAWFORD | Knoxville | 1,496 | 155 | 1,651 | ✓ | |
| 2 | | CRISP | Cordele | 4,785 | 721 | 5,506 | ✓ | |
| 2 | | DADE | Trenton | 3,678 | 40 | 3,718 | ✓ | |
| 2 | | DAWSON | Dawsonville | 2,172 | 0 | 2,172 | ✓ | |
| 4 | | DECATUR | Bainbridge | 7,530 | 960 | 8,490 | ✓ | |
| 6 | | DEKALB | Decatur | 64,450 | 2,153 | 66,603 | ✓ | |
| 2 | | DODGE | Eastman | 8,728 | 2,028 | 10,756 | ✓ | |
| 2 | | DOOLY | Vienna | 4,252 | 722 | 4,974 | ✓ | |

| | | | | | | |
|---|------------|---------------|---------|--------|---------|---------------------|
| 2 | COOK | Adel | 6,000 | 500 | 6,500 | |
| 4 | COWETA | Newnan | 11,597 | 1,647 | 13,244 | |
| 2 | CRAWFORD | Knoxville | 1,496 | 155 | 1,651 | |
| 2 | CRISP | Cordele | 4,785 | 721 | 5,506 | |
| 2 | DADE | Trenton | 3,678 | 40 | 3,718 | |
| 2 | DAWSON | Dawsonville | 2,172 | 0 | 2,172 | |
| 4 | DECATUR | Bainbridge | 7,530 | 960 | 8,490 | |
| 6 | DEKALB | Decatur | 64,450 | 2,153 | 66,603 | |
| 2 | DODGE | Eastman | 8,728 | 2,028 | 10,756 | |
| 2 | DOOLY | Vienna | 4,252 | 722 | 4,974 | |
| 4 | DOUGHERTY | Albany | 10,815 | 2,628 | 13,443 | |
| 2 | DOUGLAS | Douglasville | 6,946 | 832 | 7,778 | |
| 2 | EARLY | Blakely | 3,812 | 205 | 4,017 | |
| 2 | ECHOLS | Statenville | 804 | 15 | 819 | |
| 2 | EFFINGHAM | Springfield | 2,618 | 188 | 2,806 | |
| 2 | ELBERT | Elberton | 9,012 | 1,104 | 10,116 | |
| 2 | EMANUEL | Swainsboro | 7,252 | 1,762 | 9,014 | |
| 2 | EVANS | Claxton | 2,206 | 483 | 2,689 | |
| 2 | FANNIN | Blue Ridge | 8,503 | 19 | 8,522 | |
| 2 | FAYETTE | Fayetteville | 3,204 | 25 | 3,229 | |
| 6 | FLOYD | Rome | 19,244 | 1,523 | 20,767 | |
| 2 | FORSYTH | Cumming | 4,148 | 0 | 4,148 | |
| 2 | FRANKLIN | Carnesville | 5,500 | 300 | 5,800 | |
| 6 | FULTON | Atlanta | 104,877 | 28,414 | 133,291 | |
| 2 | GILMER | Ellijay | 4,454 | 6 | 4,460 | |
| 2 | GLASCOCK | Gibson | 1,339 | 19 | 1,358 | |
| 4 | GLYNN | Brunswick | 7,425 | 2,039 | 9,464 | |
| 2 | GORDON | Calhoun | 7,702 | | 7,702 | (Not Broken down) |
| 2 | GRADY | Gairo | 5,076 | 831 | 5,907 | |
| 2 | GREENE | Greensboro | 5,053 | 2,728 | 7,781 | |
| 4 | GWINNETT | Lawrenceville | 16,498 | 1,002 | 17,500 | |
| 2 | HABERSHAM | Clarksville | 8,223 | 200 | 8,423 | (Approximate) |
| 4 | HALL | Gainesville | 17,542 | 1,209 | 18,751 | |
| 2 | HANCOCK | Sparta | 2,064 | 1,730 | 3,794 | |
| 2 | HARALSON | Buchanan | 11,443 | 751 | 12,194 | |
| 2 | HARRIS | Hamilton | 3,635 | 215 | 3,850 | |
| 2 | HART | Hartwell | 5,944 | 294 | 6,238 | |
| 2 | HEARD | Franklin | 2,475 | 374 | 2,849 | |
| 2 | HENRY | McDonough | 5,442 | 1,662 | 7,104 | |
| 2 | HOUSTON | Perry | 7,739 | | 7,739 | (Cannot break down) |
| 2 | IRWIN | Ocilla | 4,500 | 700 | 5,200 | |
| 2 | JACKSON | Jefferson | 7,209 | 450 | 7,659 | |
| 2 | JASPER | Monticello | 2,530 | 804 | 3,334 | |
| 2 | JEFF DAVIS | Hazlehurst | 6,134 | 56 | 6,190 | |

COUNTIES AND COUNTY SITES IN GEORGIA—Concluded

| UNIT VOTE | COUNTY | COURTHOUSE | COURTHOUSE | | Total | | |
|--------------|------------|---------------|------------|---------|--------|-------------------|--|
| | | | White | Colored | | | |
| 2 | JEFFERSON | Louisville | 4,120 | 264 | 4,384 | | |
| 2 | JENKINS | Millen | 2,502 | 694 | 3,196 | | |
| 2 | JOHNSON | Wrightsville | 3,655 | 268 | 3,923 | | |
| 2 | JONES | Gray | 2,048 | 611 | 2,659 | | |
| 2 | LAMAR | Barnesville | 2,801 | 899 | 3,700 | | |
| 2 | LANIER | Lake land | 1,892 | 452 | 2,344 | | |
| 4 | LAURENS | Dublin | 13,218 | 3,507 | 16,725 | | |
| 2 | LEE | Leesburg | 1,281 | 29 | 1,310 | | |
| 2 | LIBERTY | Hinesville | 2,128 | 2,472 | 4,600 | | |
| 2 | LINCOLN | Lincolnton | 2,437 | 3 | 2,440 | | |
| 2 | LONG | Ludowici | | | | | |
| 4 | LOWNDES | Valdosta | 11,860 | 2,704 | 14,564 | | |
| 2 | LUMPKIN | Dahlonega | 3,912 | 83 | 3,995 | | |
| 2 | MACON | Oglethorpe | 3,024 | 178 | 3,202 | | |
| 2 | MADISON | Danielsville | 4,588 | 55 | 4,643 | | |
| 2 | MARION | Buena Vista | 1,330 | 52 | 1,382 | (Not broken down) | |
| 2 | McDUFFIE | Thomson | 4,089 | 379 | 4,468 | | |
| 2 | McINTOSH | Darien | 1,396 | 1,219 | 2,615 | | |
| 4 | MERIWETHER | Greenville | 5,457 | 927 | 6,384 | | |
| 2 | MILLER | Colquitt | 3,357 | 6 | 3,363 | | |
| 4 | MITCHELL | Camilla | 7,298 | 375 | 7,673 | | |
| 2 | MONROE | Forsyth | 3,333 | 753 | 4,086 | | |
| 2 | MONTGOMERY | Mt. Vernon | 3,315 | 1,005 | 4,320 | | |
| 2 | MORGAN | Madison | 2,615 | 738 | 3,353 | | |
| 2 | MURRAY | Chatsworth | 4,962 | 35 | 4,997 | | |
| 6 | MUSCOGEE | Columbus | 22,859 | 3,729 | 26,588 | | |
| 2 | NEWTON | Covington | 9,058 | 1,905 | 10,963 | | |
| 2 | OCONEE | Watkinsville | 3,224 | 372 | 3,596 | | |
| 2 | OGLETHORPE | Lexington | 2,958 | 199 | 3,157 | | |
| 2 | PAULDING | Dallas | 7,851 | 435 | 8,286 | | |
| 2 | PEACH | Ft. Valley | 2,539 | 679 | 3,218 | | |
| 2 | PICKENS | Jasper | 4,393 | 101 | 4,494 | | |
| 2 | PIERCE | Blackshear | 3,388 | 381 | 3,769 | | |
| 2 | PIKE | Zebulon | 2,520 | 496 | 3,016 | | |
| 4 | POLK | Cedartown | 9,852 | 1,154 | 11,006 | | |
| 2 | PULASKI | Hawkinsville | 2,853 | 235 | 3,088 | | |
| 2 | PUTNAM | Eatonton | 2,366 | 570 | 2,936 | | |
| 2 | QUITMAN | Georgetown | 721 | 42 | 763 | | |
| 2 | RABUN | Clayton | 4,867 | 11 | 4,878 | | |
| 2 | RANDOLPH | Cuthbert | 2,585 | 493 | 3,078 | | |
| 6 | RICHMOND | Augusta | 23,260 | 5,820 | 29,080 | | |
| 2 | ROCKDALE | Conyers | 3,501 | 563 | 4,064 | | |
| 2 | SCHLEY | Ellaville | 1,006 | 158 | 1,164 | | |
| 2 | SCREVEN | Sylvania | 3,027 | 535 | 3,562 | | |
| 2 | SEMINOLE | Donalsonville | 3,172 | 29 | 3,201 | | |
| 4 | SPALDING | Griffin | | | | | |

| | | | | | |
|---|------------|----------------|--------|-------|--------|
| 2 | PUTNAM | Eatonton | 2,853 | 235 | 3,088 |
| 2 | QUITMAN | Georgetown | 2,366 | 570 | 2,936 |
| 2 | RABUN | Clayton | 721 | 12 | 761 |
| 2 | RANDOLPH | Cuthbert | 4,867 | 11 | 4,878 |
| 2 | RANDOLPH | Cuthbert | 2,525 | 493 | 3,078 |
| 6 | RICHMOND | Augusta | 23,260 | 5,820 | 29,080 |
| 2 | ROCKDALE | Conyers | 3,501 | 563 | 4,064 |
| 2 | SCHLEY | Ellaville | 1,006 | 158 | 1,164 |
| 2 | SCREVEN | Sylvania | 3,027 | 535 | 3,562 |
| 2 | SEMINOLE | Donalsonville | 3,172 | 29 | 3,201 |
| 4 | SPALDING | Griffin | | | |
| 2 | STEPHENS | Toccoa | 8,242 | 627 | 8,869 |
| 2 | STEWART | Lumpkin | 1,555 | 107 | 1,662 |
| 4 | SUMTER | Americus | 5,164 | 483 | 5,647 |
| 2 | TALBOT | Talbotton | 1,448 | 219 | 1,667 |
| 2 | TALIAFERRO | Crawfordville | 913 | 756 | 1,669 |
| 2 | TATTNALL | Reidsville | 8,224 | 1,680 | 9,904 |
| 2 | TAYLOR | Butler | 3,103 | 347 | 3,450 |
| 2 | TELFAIR | McRae | 7,389 | 169 | 7,558 |
| 2 | TERRELL | Dawson | 2,810 | 48 | 2,858 |
| 4 | THOMAS | Thomasville | 8,422 | 1,579 | 10,001 |
| 4 | TIFT | Tifton | 6,681 | 1,113 | 7,794 |
| 2 | TOOMBS | Lyons | 5,543 | 170 | 5,713 |
| 2 | TOWNS | Hiawassee | | | |
| 2 | TREUTLEN | Soperton | 2,521 | 31 | 2,552 |
| 4 | TROUP | LaGrange | 13,836 | 2,104 | 15,940 |
| 2 | TURNER | Ashburn | 3,893 | 474 | 4,367 |
| 2 | TWIGGS | Jeffersonville | 2,517 | 348 | 2,865 |
| 2 | UNION | Blairsville | 4,944 | 0 | 4,944 |
| 4 | UPSON | Thomaston | 5,437 | 466 | 5,903 |
| 4 | WALKER | LaFayette | 23,324 | 1,127 | 24,451 |
| 2 | WALTON | Monroe | 6,873 | 805 | 7,678 |
| 4 | WARE | Waycross | 11,418 | 2,318 | 13,736 |
| 2 | WARREN | Warrenton | 2,006 | 195 | 2,201 |
| 2 | WASHINGTON | Sandersville | 6,696 | 1,704 | 8,400 |
| 2 | WAYNE | Jesup | 7,931 | 1,439 | 9,370 |
| 2 | WEBSTER | Preston | 934 | 0 | 934 |
| 2 | WHEELER | Alamo | 3,157 | 435 | 3,592 |
| 2 | WHITE | Cleveland | 3,932 | 189 | 4,121 |
| 4 | WHITFIELD | Dalton | 15,920 | 857 | 16,777 |
| 2 | WILCOX | Abbeville | 3,059 | 230 | 3,289 |
| 2 | WILKES | Washington | 3,364 | 290 | 3,654 |
| 2 | WILKINSON | Irwinton | 3,041 | 411 | 3,452 |
| 2 | WORTH | Sylvester | 5,855 | 296 | 6,151 |

Totals

1,127,939 158,082

1,286,021

Note: 3 Counties failed to send in their figures.

[fol. 193]

PLAINTIFFS' EXHIBIT 17

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

Personally appeared before me the undersigned officer duly authorized by law to administer oaths, WILSON BROOKS, who, after being sworn, deposes and says:

That he is a member of the General Assembly of the State of Georgia representing the County of Fulton. In that capacity deponent was invited to a conference and briefing session called by the Governor of Georgia and held in the Senate Chamber, State Capitol, on April 10, 1962, at 10:00 A.M., pursuant to a telegram from said Governor, copy of which is hereto attached, made a part hereof and marked Exhibit A.

Attending said conference were the Governor of Georgia, the Attorney General of Georgia, B. D. Murphy, Lamar Sizemore and Freeman Leverett, all associated with the Governor in his presentation. The presentation was made to representatives of the Fourth and Fifth Congressional Districts who serve in the General Assembly.

[fol. 194] The purpose of said conference as outlined by the Governor was, amongst other things, to devise a method preserving the "traditional" method of voting in the state-wide Democratic Primaries, namely, the county unit system. The gist of the Governor's remarks was to encourage

steps to preserve and protect the county unit system and as near as possible to preserve the present method of apportionment in the General Assembly of Georgia.

The Governor, the Attorney General, Mr. Murphy, Mr. Sizemore and Mr. Leverett all were in agreement that the suit captioned above represented a real threat to the county unit system and that the system was legally doomed if the General Assembly did not undertake some method of saving it.

From counsel participating with the Governor in the conference it was clear that the purpose of the conference and the legislative call was and is to preserve the county unit system without breaking down the traditional voting strength of the smaller counties under the county unit system as now enforced.

The Governor has proposed since March 26, 1962, a plan by which Fulton County would be accorded 38 unit votes, but subsequent adjustments have reduced that number to his present proposal of 22.

All of the counsel, including the Attorney General, Mr. Murphy, Mr. Sizemore and Mr. Leverett at said meeting showed an intimate familiarity with legal precedents involved in constitutional issues presented by the captioned case; counsel Murphy citing from memory the style of other cases in which he had been counsel involving the county unit system and giving the conferees the benefit of the holdings of said cases and his interpretation of their effect upon the issues presented in the captioned case. Counsel Murphy throughout the briefing session did not use notes [fol. 195] but appeared to speak from memory and without hesitation. Other counsel present read from Federal and Georgia Constitutions and a number of cases, leading up to and including the case of *Baker v. Carr*. All counsel present showed a comprehension and understanding of the latest case of *Baker v. Carr*. Furthermore, counsel Sizemore displayed a comprehensive grasp of the issues involved not only in the captioned case but in the so-called field of Congressional apportionment.

Your deponent has been a member of the General Assembly for three terms, representing there the County of Fulton and he knows the distribution of the voting strength of the

General Assembly as well as the political stakes involved in the county unit system. Knowing this, your deponent is of the opinion that no meaningful adjustment of the discrimination against Fulton and other large counties under the county unit system will, as a matter of practical politics, be passed in the Special Session of the General Assembly as presently composed unless the same be required by the Federal Court.

The general tenor of the briefings of the Governor, the Attorney General, and the associated counsel present at the said meeting of April 10, 1962 was to preserve and protect the county unit system, maintaining as far as possible existing discrimination ratios and to do as little as possible to correct these and at the same time attempting to prevent further intervention by the Federal Courts.

Attached hereto and made a part hereof is a copy of the telegram of the Governor calling the Extra Session of the General Assembly to convene April 16, 1962.

This affidavit is made for use in the captioned case.

/s/ WILSON BROOKS

Sworn to and subscribed before
me this 13 day of April, 1962.

/s/ FRANCES H. WILLIAMS
Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[SEAL]

[Handwritten notation—I certify I have served counsel of record with this affidavit by mailing a copy to each. This 15th April 1962. Morris B. Abram, counsel for plaintiff.]

[fol. 196]

(Western Union Telegram)

737P EST APR 5 62 AH549
A LLY746 LLZ29 LLZ29 NL PD ATLANTA GA 5
REP WILSON BROOKS
413 GRANT BLDG ATLA

YOUR PRESENCE IS URGENTLY NEEDED AT A
SPECIAL MEETING OF MEMBERS OF THE

GEORGIA GENERAL ASSEMBLY FROM THE 4TH AND 5TH CONGRESSIONAL DISTRICTS AT 10:00 A.M. ON TUESDAY, APRIL 10, IN THE STATE SENATE CHAMBER AT WHICH TIME I WILL DISCUSS WITH YOU A PROPOSAL TO MEET THE THREAT TO THE COUNTY UNIT SYSTEM POSED BY PENDING FEDERAL COURT LITIGATION. THIS PROPOSAL WILL BE PRESENTED BY ME AT AN EXTRAORDINARY LEGISLATIVE SESSION APRIL 16. LEGISLATION AT THIS SESSION WILL BE RESTRICTED TO PROPOSALS DEALING WITH THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT
 ERNEST VANDIVER GOVERNOR.

[fol. 197]

(Western Union Telegram)

931P EST APR 5 62 AF575
 ALLY962 LLZ31 LLZ31 NL PD ATLANTA GA 5
 REP WILSON BROOKS
 413 GRANT BLDG ATLA

I AM CALLING THE GEORGIA GENERAL ASSEMBLY INTO EXTRAORDINARY SESSION APRIL 16 DUE TO THE THREAT TO THE COUNTY UNIT SYSTEM POSED BY PENDING FEDERAL COURT LITIGATION. YOUR PRESENCE IS URGENTLY NEEDED TO CONSIDER LEGISLATION OF AN EMERGENCY NATURE ON THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT. I WILL DISCUSS WITH LEGISLATORS A PROPOSAL TO MEET THIS THREAT IN SPECIAL DISTRICT MEETINGS HERE AT THE STATE CAPITOL PRIOR TO APRIL 16. YOU WILL BE ADVISED IN A SUBSEQUENT MESSAGE OF THE DETAILS OF THE DISTRICT MEETING FOR YOUR AREA. LEGISLATION WILL BE RESTRICTED TO PROPOSALS DEALING WITH THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT

S ERNEST VANDIVER GOVERNOR.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL.

GEORGIA

FULTON COUNTY

Personally appeared before me the undersigned officer duly authorized by law to administer oaths, LESLIE J. GAYLORD, who, after being sworn says:

Deponent's name is Leslie J. Gaylord, a resident of DeKalb County, Georgia, residing at 120 Glendale Avenue, Decatur, Georgia. Deponent has been a resident of the State of Georgia for forty-one years and is presently assistant professor of mathematics at Agnes Scott College, Decatur, Georgia, and has been on the faculty at Agnes Scott College since 1921, teaching there mathematics. Your deponent was educated as follows: Lake Erie College, Painesville, Ohio; University of Chicago, Chicago, Illinois, and University of Rome, Rome, Italy, and holds a BA degree and Master of Science, being in the specialty of mathematics.

Your deponent says, that she has examined the language used in Title 2, U.S.C.A. §2(a) with respect to the reapportionment of representatives in the National House of Representatives and has noted therein the use of the words "equal proportions." She states that said words to her [fol. 199] knowledge have no independent mathematical meaning but she has further examined the case of Shaw v. Atkins, 153 S.W. 2d 415 and comprehends the language

therein used where it is said by the Court: "Equal proportions—the priority list is obtained by dividing the population of each county by the geometric mean of successive numbers of representatives. The priority list obtained by the process shown in the ninth footnote (equal proportions) is made use of in the manner explained as pertaining to major fractions. The priority list and other data for use in the equal proportions method are shown in the tenth footnote."

With respect to the so-called "equal proportions" formula, your deponent says that said formula is not capable of producing an equal distribution or apportionment of representative seats insofar as it is applied to a situation in which a certain number of seats must be arbitrarily assigned without regard to population.

Your deponent says that the relative disparities and disproportions produced by the application of the "equal proportions" method are dependent perforce upon the following circumstances: (1) the total number of representatives to be distributed and (2) the number of that total to be distributed arbitrarily and without regard to population.

Your deponent says that the equal proportions method will produce the greatest disparities and the greatest discriminations when the pool of seats to be assigned is small and the number of seats to be arbitrarily assigned relative thereto is large. In the case of the National House of Representatives, your deponent points out that there are 435 seats to be assigned, of which, when Title 2, U.S.C.A. §2(a) was enacted, only 48 of said total were to be [fol. 200] assigned arbitrarily without regard to population, leaving a total of 387 to be allocated under the so-called formula of equal proportions. Thus, when said section of the U.S.C.A. was enacted, 89.0% of the total pool of seats to be allocated was to be assigned under the so-called formula of equal proportions. Even today, when there are 50 seats, applying the formula of equal proportions, of the total of 435 seats, 385 of them would be assigned according to the formula of equal proportions or 88.5% of the total.

Your deponent shows that if the so-called equal proportions formula were arbitrarily to be used in assigning the

distribution of seats in the Georgia House of Representatives, of which she knows there to be only 205 seats to be assigned amongst 159 counties, the so-called equal proportions formula would only apply to 46 seats and 159 seats would be assigned arbitrarily without regard to any proportions or population. By applying the equal proportions technique therefore to the problem of assigning seats in the Georgia House of Representatives, the equal proportions formula must necessarily create grave disparities of a far greater magnitude than would be present in applying the so-called formula in the case of the Federal House of Representatives.

In the use of such a formula as applied to the Georgia House of Representatives, for example, only 22.4% of the seats would be available (giving each of the 159 counties one seat) for assignment with regard to population. Under the governor's current proposal the seats available for assignment by population would be only 8.9%.

Your deponent further says that under the so-called equal proportions formula, if it were applicable, Fulton County would presently receive 17 seats in the Georgia House of Representatives.

[fol. 201] Your deponent understands that the Governor of the State of Georgia has proposed to the General Assembly in Extraordinary Session on April 16, 1962, that the number of seats in the lower house thereof would be increased by 20 seats, making a total of 225. Applying the so-called "equal proportions" formula to said number of seats and giving each of Georgia's 159 counties one seat arbitrarily and without regard to population, Fulton County would then be entitled to receive 22 seats.

Your deponent is informed that the Governor has proposed to the General Assembly in Extraordinary Session on April 16, 1962, that the so-called equal proportions formula be used by assigning arbitrarily and without regard to population, not just 159 seats, one to each of Georgia's 159 counties, but two seats arbitrarily to an additional 30 counties in the state and three seats arbitrarily to an additional 8 counties in the state. Under such proposal, there would be available for the application of the "equal proportions" formula, under the present compo-

tion of the House of Representatives of Georgia, no seats; but under the Governor's proposal, as your deponent understands it, there would be arbitrarily available for the application of the "equal proportions" formula but 20 seats to be placed in a pool to which the equal proportions formula would be applied.

Moreover, applying said "equal proportions" formula to said pool of 20 seats, Fulton County would be entitled to 14 of the total seats in the House of Representatives but your deponent understands that the Governor's proposal would only allocate to Fulton County, 12. Further, DeKalb County would have seven representatives, not six as the [Vol. 202] Governor has proposed. Thus, the proposal of the Governor does not even mathematically carry out the so-called limited requirements of the "equal proportions" as she understands he has proposed it.

Your deponent says that manifestly the equal proportions formula can produce a vast variety of results, depending upon the number of seats to be assigned and, of that number, the number to be assigned arbitrarily. Actually, the equal proportions formula, (which simply means that a priority list is obtained by dividing the population of each district by the geometric mean of successive numbers of representatives,) can never achieve equality amongst voters if the system is used to apply to the problem of voting as opposed to the problem of representation. Thus, the system is not applicable in any case where it is intended to achieve equalities of voting strength. Moreover, if the purpose of the mathematical exercise is to give or to afford citizens of Fulton County a relative equality of representation with the citizens of the least populous county in Georgia—Echols—it would be necessary (assuming Echols and every other county in Georgia to have one representative and ignoring fractions), that the lower House of Representatives in Georgia consist of 2102, of which number Fulton County would be required to have 297 seats in said House of Representatives.

Your deponent understands that the county unit system is based on the assumption that each county will be assigned unit votes twice the number of its representatives in the lower house of the Georgia General Assembly, and under

assumptions immediately above, the Fulton County unit [fol. 203] vote would be 594 and Echols' unit vote would still remain at 2.

The attached tables will show the discrimination against the County of Fulton applying the so-called "equal proportions" formula under the following variety of circumstances:

Table I assumes that no county will lose a representative and the House of Representatives remains at 205 seats.

Table II assumes that the lower house will remain at 205 and that each county will be arbitrarily assigned at least one seat.

Table III assumes that the lower house will be increased to 225 and each county is assigned arbitrarily one seat.

Table IV assumes that no county will lose a representative and the House is increased to 225 seats.

This affidavit is given for the purpose of being used as evidence in the above styled case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before
me this 15 day of April, 1962

/s/ FRANCES H. WILLIAMS

Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[Handwritten notation—I certify that I have served counsel of record with a copy of this affidavit by mailing same. This 15th of April 1962. Morris B. Abram, Attorney for Plaintiff.]

[fol. 204]

TABLE I

HOUSE OF 205 SEATS. NO CHANGE IN
PRESENT 1-2-3 APPORTIONMENT

Fulton County

| | |
|-------------------------------|---------|
| Number of representatives | 3 |
| Population | 556,326 |
| Population per representative | 185,442 |

Echols County

| | |
|-------------------------------|------|
| Number of representatives | 1 |
| Population | 1876 |
| Population per representative | 1876 |

Ratio of Fulton County population per representative to Echols County population per representative

98.8

[fol. 205]

TABLE II

HOUSE OF 205 SEATS, 46 SEATS TO BE ASSIGNED
ON "EQUAL PROPORTIONS"

Fulton County

| | |
|-------------------------------|---------|
| Number of representatives | 17 |
| Population | 556,326 |
| Population per representative | 32,725 |

Echols County

| | |
|-------------------------------|------|
| Number of representatives | 1 |
| Population | 1876 |
| Population per representative | 1876 |

Ratio of Fulton County population per representative to Echols County population per representative

17.4

[fol. 206]

TABLE III

HOUSE OF 225 SEATS, 66 SEATS TO BE ASSIGNED
ON "EQUAL PROPORTIONS"

| | |
|---|---------|
| <i>Fulton County</i> | |
| Number of representatives | 22 |
| Population | 556,326 |
| Population per representative | 25,288 |
| <i>Echols County</i> | |
| Number of representatives | 1 |
| Population | 1876 |
| Population per representative | 1876 |
| Ratio of Fulton County population per representative to Echols County population per representative | 13.5 |

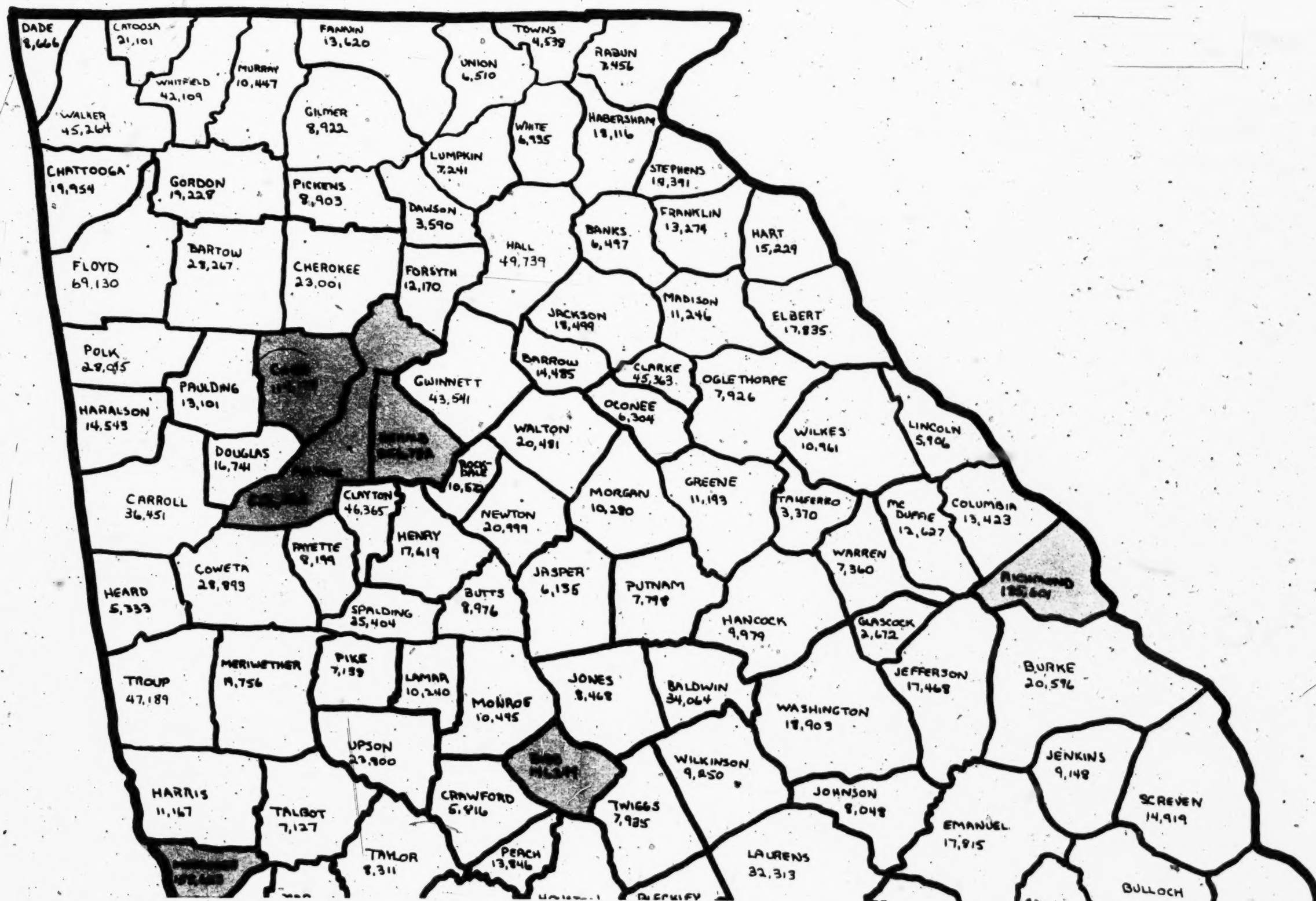
[fol. 207]

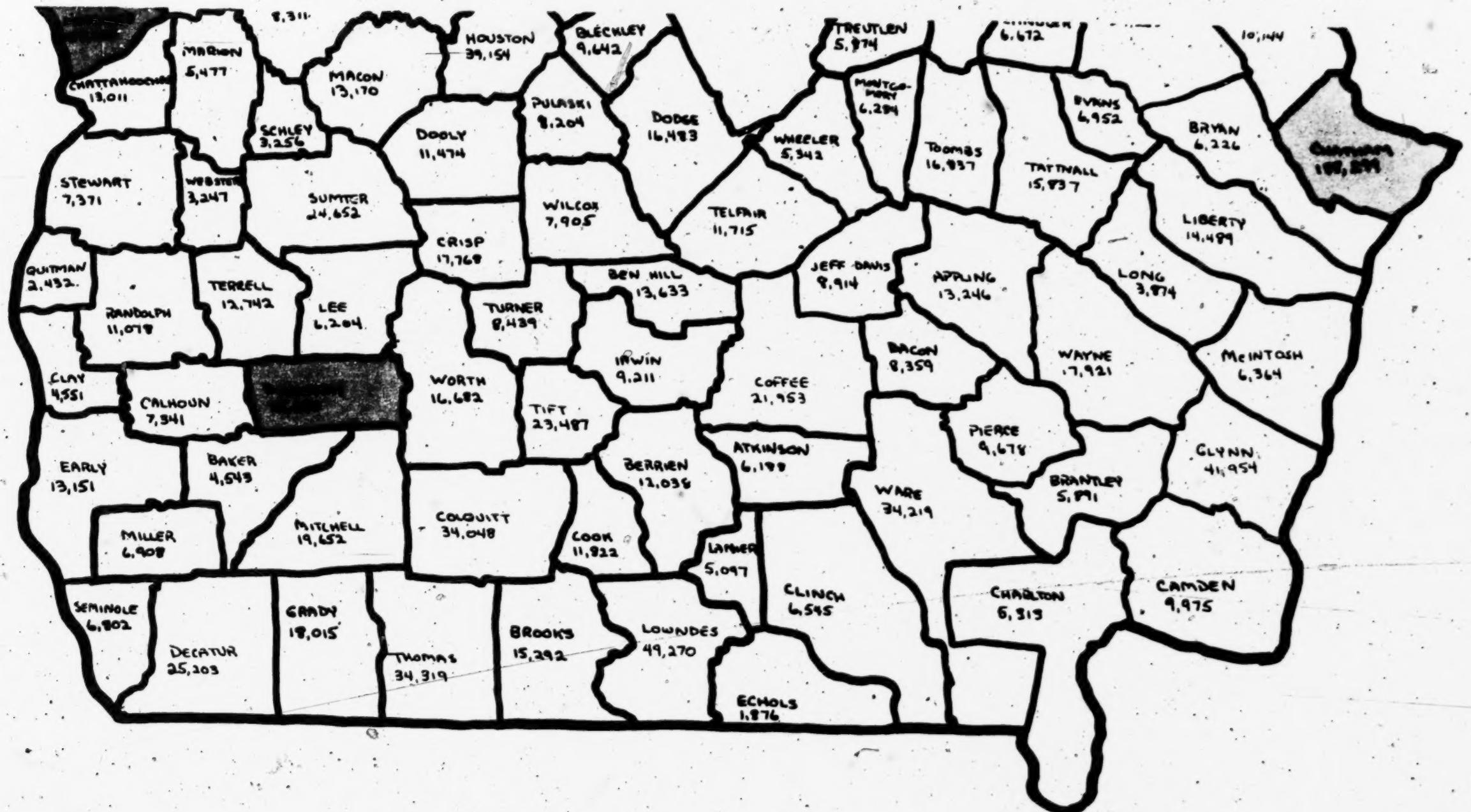
TABLE IV

HOUSE OF 225 SEATS, 1-2-3 FORMULA PLUS 20 SEATS
TO BE ASSIGNED ON "EQUAL PROPORTIONS"

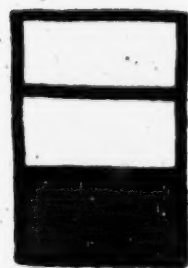
| | |
|---|---------|
| <i>Fulton County</i> | |
| Number of representatives | 14 |
| Population | 556,326 |
| Population per representative | 39,738 |
| <i>Echols County</i> | |
| Number of representatives | 1 |
| Population | 1876 |
| Population per representative | 1876 |
| Ratio of Fulton County population per representative to Echols County population per representative | 21.2 |

GEORGIA - 1960





KEY:



2 UNIT
4 UNIT
6 UNIT

CONSOLIDATED RETURNS

General Election, November 8, 1960

U. S. SENATOR

| | |
|----------------------|---------|
| RICHARD B. RUSSELL | 576,140 |
| Write-in votes total | 355 |

U. S. REPRESENTATIVES

| | | |
|--------------------------------------|-----------------------------|--------|
| G. ELLIOTT HAGAN | 1st Congressional District | 53,749 |
| J. L. PILCHER | 2nd Congressional District | 43,596 |
| E. L. (TIC) FORRESTER ¹ | 3rd Congressional District | 55,005 |
| JOHN J. FLYNT ² | 4th Congressional District | 53,394 |
| JAMES C. DAVIS ³ | 5th Congressional District | 80,023 |
| CARL VINSON | 6th Congressional District | 44,237 |
| JOHN W. DAVIS (Dem.) | 7th Congressional District | 69,717 |
| E. RALPH IVEY (Rep.) | 7th Congressional District | 24,285 |
| IRIS FAIRCLOTH BLITCH ⁴ | 8th Congressional District | 50,456 |
| PHIL M. LANDRUM ⁵ | 9th Congressional District | 57,549 |
| ROBERT G. STEPHENS, JR. ⁶ | 10th Congressional District | 41,679 |

| | |
|---|-----|
| ¹ Republican Party (3rd Congressional District) | 182 |
| ² Independent Party (4th Congressional District) | 1 |
| ³ Write-in votes total (5th Congressional District) | 272 |
| ⁴ Republican Party (8th Congressional District) | 84 |
| ⁵ Write-in votes total (9th Congressional District) | 2 |
| ⁶ Write-in votes total (10th Congressional District) | 41 |

PRESIDENTIAL ELECTORS

NAMES OF DEMOCRATIC CANDIDATES FOR PRESIDENTIAL ELECTORS

| | | |
|----------------|----------------------|---------|
| STATE AT LARGE | S. Ernest Vandiver | 458,638 |
| | Peter Zack Geer | 455,202 |
| 1st District | James L. Gillis | 455,720 |
| 2nd District | James H. Gray | 455,576 |
| 3rd District | Lamar Sizemore | 455,378 |
| 4th District | David Arnold | 455,484 |
| 5th District | Ivy Duggan | 455,251 |
| 6th District | Tom Carr | 455,099 |
| 7th District | J. Battle Hall | 455,191 |
| 8th District | Robert E. Lee | 455,241 |
| 9th District | Glenn W. Ellard | 455,255 |
| 10th District | Charlie Baldwin | 455,510 |
| | Write-in votes total | |

NAMES OF REPUBLICAN CANDIDATES FOR PRESIDENTIAL ELECTORS

| | | |
|----------------|----------------------|---------|
| STATE AT LARGE | Robert R. Snodgrass | 274,472 |
| | William B. Shartzer | 273,346 |
| 1st District | James L. Sundy | 273,080 |
| 2nd District | Russell E. Kaliher | 272,992 |
| 3rd District | James M. Brophy | 272,907 |
| 4th District | Paul Cobb | 272,962 |
| 5th District | Charles A. Moye, Jr. | 272,885 |
| 6th District | J. Marvin Elliott | 272,968 |
| 7th District | C. Eugene Hughes | 272,901 |
| 8th District | James M. Kent | 273,041 |
| 9th District | Cecil G. Hartness | 272,902 |
| 10th District | Eugene T. Gilbert | 272,859 |
| | 239 | |

[fol. 209]

DEPENDANTS' EXHIBIT 1

209

CONSTITUTIONAL AMENDMENTS

General Amendments voted on State-wide:

| | | | | | |
|--------|--------------|------------------|--------|--------------|------------------|
| No. 1 | For: 282,773 | Against: 133,810 | No. 11 | For: 214,788 | Against: 152,451 |
| No. 2 | For: 206,952 | Against: 148,528 | No. 12 | For: 173,170 | Against: 195,012 |
| No. 3 | For: 121,237 | Against: 257,843 | No. 13 | For: 254,520 | Against: 109,713 |
| No. 4 | For: 207,067 | Against: 164,972 | No. 14 | For: 251,937 | Against: 111,249 |
| No. 5 | For: 194,771 | Against: 170,889 | No. 15 | For: 242,015 | Against: 115,705 |
| No. 6 | For: 116,296 | Against: 247,233 | No. 16 | For: 232,036 | Against: 118,314 |
| No. 7 | For: 180,174 | Against: 173,625 | No. 17 | For: 179,466 | Against: 161,234 |
| No. 8 | For: 247,301 | Against: 128,534 | No. 18 | For: 185,954 | Against: 148,736 |
| No. 9 | For: 212,516 | Against: 140,167 | No. 19 | For: 139,699 | Against: 173,948 |
| No. 10 | For: 119,203 | Against: 278,804 | | | |

CONSTITUTIONAL AMENDMENTS

Local Amendments voted on in affected areas:

The following local amendments were proclaimed by the Governor on November 18, 1960, as being ratified: Nos. 20, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48, 50, 51, 52, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 68, 72, 73, 74, 75, 76, 77, 78, 79, 81, 83, 84, 85, 86 and 87; and the following local amendments were proclaimed by the Governor on November 18, 1960, as not having been ratified: Nos. 21, 22, 23, 24, 26, 40, 42, 49, 53, 54, 61, 66, 67, 69, 70, 71, 80 and 82.

SUPREME COURT JUSTICES

| | |
|--------------------------------------|---------|
| CARLTON MOBLEY | 549,910 |
| JOSEPH D. QUILLIAN | 552,284 |
| BENNING GRICE | 547,997 |
| Write-in votes total (Fulton County) | 7 |

COURT OF APPEALS JUDGES

| | |
|--------------------------------------|---------|
| JOHN SAMMONS BELL | 550,748 |
| JULE W. FELTON | 547,296 |
| JOHN E. FRANKUM (Unexpired term) | 545,460 |
| JOHN E. FRANKUM | 544,675 |
| J. M. C. TOWNSEND | 548,541 |
| Write-in votes total (Fulton County) | 12 |

JUDGES OF THE SUPERIOR COURTS

| | | |
|--|--------------------------|---------|
| Alapaha Judicial Circuit | H. W. LOTT | 546,806 |
| Albany Judicial Circuit | CARL E. CROW | 546,747 |
| Augusta Judicial Circuit | F. FREDERICK KENNEDY | 547,629 |
| Blue Ridge Judicial Circuit | SAM P. BURTZ | 546,788 |
| Chattah'chee Judicial Circuit | HUBERT CALHOUN | 546,628 |
| Chattah'chee Judicial Circuit | J. R. THOMPSON | 546,623 |
| Cherokee Judicial Circuit | JEFFERSON L. DAVIS | 546,692 |
| Clayton Judicial Circuit | HAROLD R. BANKE | 546,669 |
| Cobb Judicial Circuit | JAMES T. MANNING | 546,680 |
| Cobb Judicial Circuit | ALBERT J. HENDERSON, JR. | 546,794 |
| Coweta Judicial Circuit | LAMAR KNIGHT | 546,881 |
| Dublin Judicial Circuit | HAROLD E. WARD | 547,824 |
| Eastern Judicial Circuit | DUNBAR HARRISON | 549,460 |
| Eastern Judicial Circuit | B. B. HEERY | 549,323 |
| Gwinnett Judicial Circuit | CHAS. C. PITTARD | 547,744 |
| Macon Judicial Circuit | HAL BELL | 548,918 |
| Mountain Judicial Circuit | LAMAR N. SMITH | 546,607 |
| Northern Judicial Circuit | CAREY SKELTON | 546,627 |
| Oconee Judicial Circuit | J. K. WHALEY | 546,593 |
| Ogeechee Judicial Circuit | WALTON USHER | 546,556 |
| Piedmont Judicial Circuit | RICHARD B. RUSSELL, III | 546,767 |
| Southwestern Judicial Circuit | T. O. MARSHALL | 546,602 |
| Stone Mtn. Judicial Circuit | H. FRANK GUESS | 547,510 |
| Stone Mtn. Judicial Circuit | H. O. HUBERT, JR. | 546,771 |
| Tifton Judicial Circuit | J. BOWIE GRAY | 546,568 |
| Toombs Judicial Circuit | EARLE NORMAN | 546,515 |
| Write-in votes (Piedmont Judicial Circuit) | | 78 |
| Write-in votes (Fulton County) | | 8 |

SOLICITORS-GENERAL

| | | |
|--|-------------------------|---------|
| Alapaha Judicial Circuit | VICKERS NEUGENT | 543,702 |
| Albany Judicial Circuit | MASTON O'NEAL | 543,172 |
| Atlanta Judicial Circuit | PAUL WEBB | 547,701 |
| Augusta Judicial Circuit | GEORGE HAINS | 543,550 |
| Blue Ridge Judicial Circuit | JESS H. WATSON | 543,279 |
| Brunswick Judicial Circuit | JACK W. BALLENGER | 543,231 |
| Chattah'chee Judicial Circuit | JOHN H. LAND | 543,185 |
| Cherokee Judicial Circuit | TOM POPE | 543,243 |
| Clayton Judicial Circuit | D. M. JOHNSON | 543,172 |
| Cobb Judicial Circuit | LUTHER C. HAMES, JR. | 543,165 |
| Coweta Judicial Circuit | WRIGHT LIPFORD | 543,166 |
| Dublin Judicial Circuit | W. W. LARSEN, JR. | 543,140 |
| Eastern Judicial Circuit | ANDREW JOE RYAN, JR. | 542,089 |
| Flint Judicial Circuit | HUGH DORSEY SOSEBEE | 543,113 |
| Griffin Judicial Circuit | ANDREW J. WHALEN, JR. | 543,152 |
| Gwinnett Judicial Circuit | JACK HOLLAND | 543,149 |
| Lookout Mtn. Judicial Circuit | EARL B. (BILL) SELF | 537,291 |
| Macon Judicial Circuit | WILLIAM M. WEST | 544,616 |
| Middle Judicial Circuit | WALTER C. McMILLAN, JR. | 543,174 |
| Mountain Judicial Circuit | BEN F. CARR | 543,154 |
| Northern Judicial Circuit | CLETE D. JOHNSON | 543,136 |
| Ocmulgee Judicial Circuit | GEORGE D. LAWRENCE | 543,120 |
| Oconee Judicial Circuit | ALBERT D. MULLIS | 543,147 |
| Ogeechee Judicial Circuit | COHEN ANDERSON | 543,174 |
| Pataula Judicial Circuit | JOE M. RAY | 543,125 |
| Piedmont Judicial Circuit | ALFRED A. QUILLIAN | 543,148 |
| Rome Judicial Circuit | CHASTINE PARKER | 543,159 |
| Southern Judicial Circuit | BOB HUMPHREYS | 543,171 |
| Southwestern Judicial Circuit | STEPHEN PACE, JR. | 543,135 |
| Stone Mtn. Judicial Circuit | RICHARD BELL | 545,432 |
| Tifton Judicial Circuit | W. J. FOREHAND | 543,121 |
| Toombs Judicial Circuit | KENNETH E. GOOLSBY | 543,167 |
| Western Judicial Circuit | D. MARSHALL POLLOCK | 543,119 |
| Write-in votes total (Atlanta Judicial Circuit) | | 8 |
| Write-in votes total (Piedmont Judicial Circuit) | | 1 |

[fol. 212]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

v.

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

OPINION—April 28, 1962

Before Tuttle and Bell, Circuit Judges, Hopper, District Judge.

Bell, Circuit Judge:

Plaintiff seeks declaratory and injunctive relief alleging deprivation of federal constitutional rights. The prayer seeks to restrain the Georgia State Democratic Party and the Chairman and Secretary of the Georgia State Democratic Executive Committee in their representative capacities, and their successors in office, from conducting elections under the County Unit System; from tabulating and consolidating ballots cast in the democratic primary election to be held on September 12, 1962, and in any other primary election conducted by that party on the basis of the County [fol. 213] Unit System; from selecting any nominee on the basis of ballots cast in any primary election held on the County Unit System; from publishing or certifying the nomination of any candidate for United States Senator, Governor, Lieutenant Governor, Justice of the Supreme Court, Judge of the Court of Appeals, Secretary of State, Attorney General, Comptroller General, Commissioner of Labor, and State Treasurer on the basis of the County Unit System; and from giving force and effect to the County

Unit System as it is established under the Neill Primary Act, §§ 34-3212 through 34-3218 (Ga. Code Annot. Supp.), Georgia Laws, 1917, p. 183, et seq., Ga. Laws, 1950, p. 79 et seq. The prayer is also to restrain the Secretary of State of Georgia, and his successors in office, from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide offices who shall have been nominated in any primary held by the Democratic Party under the County Unit System; and from furnishing to the several ordinaries official ballots and election supplies whereon nomination under the County Unit System is recognized. Lastly, plaintiff seeks judgment to the effect that the Neill Primary Act is void and unconstitutional insofar as it provides for the nomination by the defendant party of any candidates for the named offices under the County Unit System.

Plaintiff is an elector within the meaning of Article II, § I, Paragraphs I through IV of the Constitution of the State of Georgia of 1945, Ga. Code §§ 2-701 through 2-704. He is qualified to vote in primary and general elections in Fulton County, is a member of the Democratic Party of Georgia, intends to vote in the democratic primary election to be held within the State of Georgia in 1962 and intends [Vol. 214] to support the nominees of such primary in the general election to be held on the Tuesday after the first Monday in November, 1962.

Defendant Democratic Executive Committee, an unincorporated association, is the governing body of the defendant Democratic Party of Georgia, also an unincorporated association, and which is composed of many thousands of persons residing throughout the State of Georgia. Defendants Gray and Stewart are Chairman and Secretary, respectively, of the Executive Committee. Defendant Fortson is Secretary of State of the State of Georgia.

¹ The facts in this memorandum opinion are to be considered as findings of fact within the meaning of Rule 52(a), Fed. R. Civ. P., cf. *Myles v. Quinn Menhaden Fisheries, Inc.*, No. 19256, 5 Cir., 1962, F.2d , and are based on the verified pleadings, and the evidence submitted on the hearing, together with liberal use of our right to take judicial notice of matters of common knowledge and public concern. 31 C.J.S., Evidence, §§ 6-27, 32, 37, 40-43, 51, 58-61, 97, 98.

Defendant Committee, as the governing body of defendant party, intends to supervise the holding of the primary election, to tabulate and consolidate the ballots cast therein and to certify to defendant Secretary of State the names of persons determined by that committee to have been nominated in the primary election, all as provided by the statutes of Georgia. The Secretary of State, pursuant to statute, will furnish to the several ordinaries of the State of Georgia official ballots and election supplies and will certify to the ordinaries the names of the candidates nominated in the primary. The ordinaries will in turn submit the names of the candidates to the electors of the State of Georgia for their choice in the general election in November.

Plaintiff contends in his suit that the County Unit System is arbitrary and discriminatory to the extent that it is a denial to him of equal protection of the laws within the meaning of the Fourteenth Amendment to the Federal [fol. 215] Constitution in that Fulton County where he resides, the largest county in Georgia, is allotted only six unit votes under the statute which in total allows six unit votes each for the eight largest counties by population in Georgia, four unit votes for each of the thirty next largest by population and two each for the remaining one hundred twenty one counties. According to the 1960 United States census Fulton County had a population of 556,326 while Georgia had a total population according to the same source of 3,943,116, Fulton County, thus having 14.11 percent of the total population of Georgia but only 1.46 percent of the total of 410 county unit votes. On the other hand, the least populous county in Georgia, Echols, had a population according to the 1960 census of 1876 or .05 percent of the population in the state, and is accorded two units or .48 percent of the total units. Thus the discrimination runs against Fulton County on an approximate ten to one ratio based on population and in favor of Echols County on an approximate ten to one ratio. The discriminatory ratio under the County Unit System runs, based on the 1960 census, between these ranges but in every instance against Fulton County. The Unit System also accords to the candidate receiving the plurality of votes in a county the entire unit vote thus reversing the votes of those voting for

another candidate just as is the case under the Federal Electoral College System.

Plaintiff asserts, in addition to his Fourteenth Amendment claim, that the System violates the Seventeenth Amendment which provides that the Senators from each state shall be elected by the people thereof.

[fol. 216] He alleges that he is without adequate remedy at law in view of the holding of the Supreme Court of Georgia in the case of *Cox v. Peters*, 1951, 208 Ga. 498, 67 S.E.2d 579, appeal dismissed, 342 U.S. 936 (1952), that an action at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System. Jurisdiction and three-judge status is based on Title 28, USCA, §§ 1343, 2201-2202, 2281 and 42 USCA, § 1983.

History of the County Unit System

The County Unit System throughout its long use in primary elections in Georgia, first by party rule and later by statute, has always been based on the formula obtaining for apportionment of the House of Representatives.² Thus we look first to the history of apportionment in the House of Representatives of Georgia. Eight counties were established under the first state constitution, 1777, from which

² We are not aware that the statutory primary election has ever been used by any party other than the Democratic Party although it is available to all. The County Unit System is compulsory to all parties holding primary elections.

The Republican party of Georgia, although until this year it has apparently not actually nominated any one for statewide office during this century, uses the convention system for nominating for state office in presidential election years. The convention also selects a State Central Committee which has the power to nominate candidates between quadrennial conventions, which are held during presidential election years. Delegates are elected from each county at mass meetings to the state convention. The mass meeting must meet statutory requirements, Georgia Code, §§ 34-3401, 3402. The number of delegates per county to the state convention is, except for extra delegates given to counties voting Republican in the preceding election, in ratio to the number of Republican votes cast in the county in the last general election. See Gosnell and Anderson, *The Government and Administration of Georgia*, 1956, p. 37.

representatives were to be elected annually by the voters; Liberty County electing fourteen representatives, Glynn [fol. 217] and Camden one each, the other counties ten each, with the Port and Town of Savannah to have four to represent their trade and the Port and Town of Sunbury to have two to represent their trade. Glynn, Camden and all counties thereafter laid out were to have one representative provided there were ten electors in the county, then two representatives for thirty electors, three for forty, four for fifty, six for eighty, and ten for a hundred or more electors. After reaching a hundred electors a county would be entitled to two executive councilors among the number of representatives. These representatives were to meet and from their number select two from each county to constitute a Council and to elect a governor. The remaining representatives were to constitute the "house of assembly." Georgia Const. of 1777, Articles II-V; McElreath on the Constitution of Georgia (1911), pp. 230-231; *South v. Peters*, N.D. Ga., 1950, 89 F.Supp. 672.³ It was under this constitution that Georgia ratified the Federal Constitution and entered the Union on January 2, 1788.

The Constitution of 1789 was then adopted. It created a general assembly consisting of a senate and house of representatives. Each county was to have one member of the Senate with terms of three years. The Members of the House were elected annually from each of the then existing eleven counties with Camden, Glynn, Effingham, Washington, Greene, and Franklin having two each, Burke, [fol. 218] Liberty, and Richmond having four each, and Chatham and Wilkes five each, making a total of thirty four. A governor was to be elected by the Senate each two years from three persons nominated by the House of Representatives. Georgia Constitution of 1789, Article I, §§ 1-6, Article II, § 2; McElreath, pp. 242, 243, 245; *South v. Peters*, supra.

³ The right to vote under this Constitution was restricted to white males who owned property of a value of ten pounds, or who had a mechanic's trade and anyone who failed to vote was fined five pounds. Arts. IX, XII.

Under the Constitution of 1798 the principle was declared that representation in the House should thereafter be according to population on an enumeration to be made each seven years, and on the basis that population of 3,000 would entitle a county to two members of the House, 7,000 to three members, and 12,000 or over to four members, with each county to have at least one and not more than four. Constitution of 1798, Article I, § 7; McElreath, p. 252. As was said in *South v. Peters*, this plan was an evident reflection of Article I, § 2, cl. 3 of the Federal Constitution fixing the apportionment of representatives in Congress among the states.

The governor was to be elected by the General Assembly on joint ballot, and there were popular elections only by counties. Article II, § 2; McElreath, p. 259. In 1823 the Constitution was amended to provide, beginning in 1825, that the governor should be elected each two years by persons qualified to vote for members of the General Assembly, and if no candidate had a majority of the votes the General Assembly would elect the governor by joint ballot. McElreath, p. 273.

By an amendment proposed and assented to in 1842 and confirmed in 1843, forty seven senatorial districts were created and the number of representatives was fixed at 130, each county to have one, with no county to have more than two; the 37 counties having the greatest population were [fol. 219] to have two each, with reapportionment to be made after each census. McElreath, p. 277. The same basis of House apportionment was carried forward, after secession, in the Georgia Confederate Constitution, Const. of 1861, Article II, § 3, par. 1; McElreath, p. 286, and in the Constitution of 1865, adopted upon the cessation of hostilities and during the Presidential Reconstruction of Georgia. Const. of 1865, Article II, § III, par. 1; McElreath, p. 304.

The Constitution of 1868 was adopted during the second or Congressional Reconstruction and as a prerequisite to the end of the occupation of Georgia by Federal troops.

* Saye, A Constitutional History of Georgia, pp. 256-272.

It provided the three-two-one formula of apportionment in the House, which is still in use in Georgia. The House was to consist of 175 members, apportioned three each to the six largest counties, two each to the thirty one next largest, and one each to the remaining counties. The apportionment might be changed after each federal census but the total membership was not to be increased. Constitution of 1868, Article III, § 3, par. one; McElreath, p. 327.

Fulton had the smallest population of any of the six largest counties, Chatham, Richmond, Burke, Bibb and Houston being larger in that order. They each had 1.7 percent of the House representation. Fulton had only 1.36 percent of the total population while, for example, Chatham had 2.9 percent and Richmond 2.0 percent of the population. Compendium, 9th Census of the U.S. Fulton had an equality ratio based on population of 121 percent. Stated differently, Fulton had 121 percent of the number of representatives while being entitled to 100 percent on a pure population basis. On the other hand, Chatham County had [fol. 220] an equality ratio of only 59 percent while that of Richmond was 85 percent.

The Constitution of 1877 was next adopted and it was followed by the Constitution of 1945. The apportionment formula was changed by the Constitution of 1877 to the extent that it reduced the number of two representative counties from thirty one to twenty six. Changes in the total number of representatives were made from time to time because of the creation of new counties and the total was 189 at the time of the adoption of the Neill Primary Act in 1917. The situation with respect to the creation of new counties stabilized and the last county to be created in Georgia was Peach in 1924, making a total of 161 counties. Since then two counties have been abolished by merger with Fulton (Milton and Campbell) but Fulton did not get their representation. Since 1920 the formula has been three representatives on the basis of population for the eight largest counties, two for the thirty next largest and one each for the balance. Reapportionment within the limits of the formula on population was mandatory after each Federal census and has been effected to date. The Con-

stitution of 1877, Article III, § 3, pars. 1, 2; McElreath, p. 358.

We turn now to the history of primary elections held by the Democratic Party in Georgia. Prior to the Civil War the predominant parties in Georgia were the Democrats and Whigs. The Democrats took control when the war ended but were soon ousted by the Republicans. A Republican governor served from 1868 until the end of 1871 when the Democrats regained control to remain the dominant party at all times since then. The most serious competition to the Democrats was the Populist movement in the 1890's. This party elected five senators and forty-seven representatives [fol. 221] to the General Assembly in 1894 and polled 44½ percent of the total vote cast. Coulter, *Georgia, A Short History* (1961), pp. 362-380, 392-396. See also Arnett, *Populist Movement in Georgia* (1922).

Dr. Saye, *supra*, pp. 356-358, succinctly sets out the history of party nominating methods in Georgia and the events leading up to the Neill Primary Act:

"In the election of 1918, Governor Dorsey was unopposed for reelection, . . .

"The first session of the General Assembly during Dorsey's administration passed the Neill Primary Act, destined to be of far-reaching significance in the future political history of the State. Beginning with California in 1866, several states introduced legal regulations of primary elections soon after the Civil War, but in Georgia primaries continued to be managed by political parties with little legal restraint. An act of 1887 prohibited the giving or furnishing of liquor within a certain distance of polling places on election days and gave legal recognition to the existence of primaries, and an act of 1891 proscribed several regulations, but left their use optional with the political parties. Several laws on the subject were enacted during the first decade of the twentieth century, including an act of 1904 making it a misdemeanor to buy votes and an act of 1908 requiring that primaries for the nomination of State officers be held on the same date in all counties. Yet primary elections continued to be governed largely by party custom and rules.

"Prior to 1886 diverse methods had been used to select delegates to State conventions of political parties—mass meetings in county courthouses, meetings in militia districts to select delegates to county meetings, or appointment by county executive committees. Relatively few delegates had been chosen by actual vote of the people. In that year, Henry Grady, managing Gordon's campaign for Governor, effectively offset the advantage that Augustus O. Bacon held in the party organization by an appeal to the people to revolt [fol. 222] against the politicians and elect their own delegates to the Democratic State Convention. In 1890 the State Democratic Executive Committee recommended the use of primaries in selecting delegates to the State Convention, and eight years later the Democratic Party required this procedure. Delegates from each county to the State Convention of the Party were to be chosen by the county executive committees from the friends of the gubernatorial candidate receiving the largest popular vote in the county, and they were required to vote for State officers in the convention according to the vote of the people in their county.

"The county unit rule, under which the number of votes of a county in the State Convention was determined by its representation in the House of Representatives, was used from the very beginning of primaries by the Democratic Party, except in 1908, as noted above. . . ."⁵

The movement to make statutory what had been voluntary was given additional impetus by the adoption of the Seventeenth Amendment to the Federal Constitution in 1913 requiring United States Senators to be elected by

⁵ The main issue in the 1908 Democratic primary campaign was the effort of Hoke Smith to reform the "Undemocratic County Unit System whereby some country dwellers were given representation fifty times greater than that held by people living in large cities." The primary was held on a popular vote basis and Smith was defeated by Joseph M. Brown, who with Thomas E. Watson, supported the Unit System. Coulter, *supra*, p. 399.

the people instead of by the state legislature as had been the practice. And with the adoption of the Primary Act, for the Democratic Party at least so long as it is used, the direct primary displaced the county mass meeting or caucus followed by the state convention as a method of choosing party candidates for the general election, and county units displaced county delegates.*

[fol. 223] Based on the 1910 census, Fulton was the largest county when the Act was adopted in 1917 and the equality ratio for it under the Unit System, tied as it was to apportionment, had decreased from an advantage of 121 percent in 1868 over 100 to a disadvantage of 23.5 percent to 100.

After the primary is held, delegates are selected on the county unit basis from each county to attend the state convention where a platform is adopted, the votes canvassed and the names of the candidates winning the primary are ratified and certified to the Secretary of State for entry in the general election.

Under the Unit System candidates for governor and United States senator are required to receive a majority of the votes cast to secure the respective nominations out of the total of 410 county unit votes (two for each member of the House of Representatives). In the event of a tie the candidate with the largest popular vote becomes the nominee. A second or run off primary is held if no candidate has the majority. A plurality is sufficient as to the other offices to which the County Unit System applies.

The County Unit System as embraced in the Neill Primary Act is statutory only and a concerted effort was made in 1950 and again in 1952 to amend the Constitution to include it. The amendment was defeated in the 1950 general election on a popular vote basis 164,377 to 134,290, but the amendment would have carried 230 to 183 on a county unit basis. There were 309,170 votes against it and

* For other histories of Georgia political convention methods and the County Unit System see Coulter, *supra*; Gosnell and Anderson, *supra*; and Rigdon, *Georgia's County Unit System* (1961), pp. 23-27; see also *Turman v. Duckworth*, *infra*, and *South v. Peters*, *supra*.

279,882 for it in 1952 but the county unit vote would have been 264 votes for and 146 against. Rigdon, *supra*, pp. 36, 39.

[fol. 224]

*Previous Litigation Concerning the
County Unit System*

The validity of the County Unit System was first challenged in the case of *Cook v. Fortson*, N.D.Ga., 1946, 68 F.Supp. 624, where an effort was made to have the county unit rule and the statutes permitting its use declared unconstitutional, and to enjoin its use in determining the democratic nominee for Congress for the Fifth District of Georgia. The winner received a majority of the county unit vote but another candidate received a majority of the popular vote. Injunctive relief was denied on the basis of *Colegrove v. Green*, 1946, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432, leaving the inequality complained of for consideration by the State Legislature or by the Congress under Article I, § 4 of the Federal Constitution. The court doubted that the county unit rule could be said to be imposed on a congressional primary by the state at all so as to bring the Fourteenth Amendment into operation since the statute, § 34-3217, provides that it shall not be construed to require any definite unit of election of candidates for primary nomination for Congress. If imposed it is done by action of the Democratic Committee for the Congressional District and not by statute, and this was expressly stated in the state party rules. The court said that at any rate the State Democratic Executive Committee had in effect cancelled the primary by certifying both candidates to the Secretary of State for inclusion on the general election ballot where all Democrats would be free to vote their choice on a popular vote basis.

In *Turman v. Duckworth*, N.D.Ga., 1946, 68 F.Supp. 744, plaintiffs challenged the use of the County Unit System in [fol. 225] the statewide gubernatorial primary. One candidate received a plurality of the popular vote but the winner received a majority of the unit votes. An interlocutory injunction was denied. The court noted that plaintiff had

not moved to assert the invalidity of the unit system before the Executive Committee set the primary, and before it was too late to have another primary or even a convention nomination. The court stated that the power and duty of the court to act is plain where a criminal statute about a political matter is involved, *In Re Yarbrough*, 1884, 110 U.S. 651, 45 S.Ct. 152, 28 L.Ed. 274, and *United States v. Classic*, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, or where there is involved a statutory right of action for damages; as in *Nixon v. Herndon*, 1927, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; *Smith v. Allwright*, 1944, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, and *King v. Chapman*, 5 Cir., 1946, 154 F.2d 460, but denied relief on the basis of *Colegrove*, *supra*. The court then made an additional statement for use in considering the merits in the event of appeal, and held that it had not been shown that the State of Georgia had deprived plaintiffs of the equal protection of the laws, recognizing however the primary as state action within the meaning of the Fourteenth Amendment. *King v. Chapman*, *supra*. It was pointed out that neither the state nor federal government had ever sought or demanded that voters should have equal voting influence, referring to the electoral college under which there have been presidents who did not receive a majority of the popular votes, and to the fact that the great political parties in their state and national organizations have based representation in the nominating conventions on the legislative strength of the states or counties represented. The court recognized the inequality between the less populated county [fol. 226] ties and Fulton County in representation in the legislature, and by consequence in applying the county unit rule to a primary, but stated that the remedy was through changes in the law rather than by appeals to courts of equity. It is a fair statement to say that the *ratio decidendi* of this case, like *Cook* is that the decision of the court was controlled by the *Colegrove* case involving congressional reapportionment in Illinois.

Both the *Cook* case and the *Turman* case were dismissed on appeal to the Supreme Court, with the authority cited being a case on mootness. Justices Black and Murphy were of the opinion that probable jurisdiction should be noted.

with Justice Rutledge being of the opinion that the question of jurisdiction should be postponed until a hearing on the merits. 329 U.S. 675, 1945, 67 S.Ct. 21, 91 L.Ed. 596 (October 28, 1946).

Another suit was instituted in 1950, this time prior to the primary, challenging the unit system and it was dismissed by the District Court. *South v. Peters*, 89 F.Supp. 672 (N.D.Ga., 1950), Judge Andrews dissenting. The Supreme Court affirmed per curiam, saying "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions;" citing *McDougall v. Green*, 1948, 335 U.S. 281, 69 S.Ct. 1, 93 L.Ed. 31; *Colegrove*, supra; *Wood v. Brown*, 1932, 287 U.S. 1, 53 S.Ct. 1, 77 L.Ed. 313; and *Johnson v. Stevenson*, 5 Cir., 1948, 170 F.2d 108. *South v. Peters*, 1950, 339 U.S. 276, 70 S.Ct. 641, 94 L.Ed. 834. Justices Douglas and Black dissented from the dismissal on the grounds that the right to vote in a primary where the discrimination is [fol. 227] based on race, creed or color was held in *Nixon v. Herndon*, supra, to be covered by the equal protection clause of the Fourteenth Amendment, and the right to vote under such circumstances is protected by the Fifteenth Amendment. *Smith v. Allright*, supra, and *United States v. Classic*, supra. They thought the evidence regarding the County Unit System indicated equally invidious discrimination. The County Unit System would fall under the equal protection clause, and by reason of violating Article I, § 2 of the Constitution providing that members of the House of Representatives shall be chosen by the people (not here involved) and the Seventeenth Amendment providing that senators shall be elected by the people. They set out their view of what the rule should be and it turned out to be the forerunner of things to come. *Baker v. Carr*, Supreme Court, No. 6, October Term, 1961 (decided March 26, 1962). It was that "the only tenable premise under the Fourteenth, Fifteenth, and Seventeenth Amendments is that where nominations are made in primary elections, there shall be no inequality in voting power by reason of race, creed, color or other invidious discrimination."

In *Cox v. Peters*, supra, suit was brought for damages under 8 U.S.C.A. § 43 against Georgia election officials, alleging that a voter in the 1950 gubernatorial primary had been denied full enjoyment of his right to vote by reason of the County Unit System. The Georgia Supreme Court affirmed a dismissal of the suit, saying that the right to vote in a gubernatorial primary was not derived from the United States Constitution, and that the Georgia constitutional and statutory provisions asserted were applicable only to elections and that the primary was not the equivalent of an election, but only a substitute for a party convention. The United States Supreme Court dismissed for want of a substantial federal question, Justices Black and Douglas dissenting. *Cox v. Peters*, 1952, 342 U.S. 936, 72 S.Ct. 557, 96 L.Ed. 697.

A fourth attempt failed in 1958 when plaintiff was unsuccessful in obtaining the appointment of a three-judge court to consider the question. *Hartsfield v. Sloan*, leave to file petition for writ of mandamus denied, five to four, 357 U.S. 916 (1958).⁷

Jurisdiction, Justiciability, Standing and the Question Presented

A calm in litigation ensued thereafter as to the County Unit System while so-called reapportionment litigation was taking place in other states and some at least was pending before the Supreme Court. *Baker v. Carr*, supra. The instant litigation was filed shortly after the announcement of the decision in that case, and on the same day. A three-judge court was duly constituted and the matter came on promptly for hearing on the application for interlocutory injunction.

That case involved the apportionment of the Tennessee State Legislature. The court held that the District Court possessed jurisdiction of the subject matter, and that a justiciable cause of action was stated upon which the appel-

⁷ What has been heretofore stated was prepared before the hearing and before the General Assembly amended the Neill Primary Act, as will be hereinafter discussed. This was done in order to expedite a decision in a matter of such public importance.

lants, residents and voters of Tennessee claiming arbitrary and capricious state action offensive to the Fourteenth Amendment, had standing to maintain the suit. The rationale of that decision encompasses the cause of action here. We, accordingly, take jurisdiction and also hold that plaintiff has standing to maintain the suit and that the complaint sets out a justiciable issue.

In doing so, we, of course, resolve in favor of the plaintiff the question whether the Fourteenth Amendment pro-[fol. 229] tection extends to alleged deprivation of equal protection occurring in a Primary, as distinguished from a General election.

Much has been said in briefs and oral argument as to the place which the Primary in the State of Georgia has traditionally played in the election process. It is a fact known to all that the Democratic candidate has, without exception, at least during the present century, been the choice of the voters at the General election. On the other hand, it is pointed out that at least with respect to the office of Governor, a candidate has been nominated by the Republican party to participate in the General election in November of this year. Our conclusion that the protection of the Fourteenth Amendment extends to invidious discriminations if they exist in a party primary in Georgia in no way depends upon the degree to which the Democratic party primary is tantamount to the final election. It is based rather on prior decisions of the Court of Appeals for the Fifth Circuit, where it has been held that the conduct of a Primary election in Georgia is such an essential part in the total election process, its conduct and management is so closely supervised by State law and the effect to be given it is so clearly determined by statute that the action of the party in the conduct of its primary constitutes state action within the contemplation of the Fourteenth Amendment to the Constitution (*Chapman v. King*, 5 Cir., 154 F. [fol. 230] 2d 460).^{*} Touching on this matter Judge Sibley's opinion said:

^{*} As pointed out in the opinion written by Judge Sibley for the Court in *Chapman v. King*, supra:

"... The State collaborates in these ways: It prohibits anyone to participate in any primary or convention of any political

"We think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and puts its power behind the rules of the party. It adopts the primary as a part of the public election machinery." *Chapman v. King*, supra, p. 464.

See also *Smith v. Allright*, 321 U.S. 649, and *United States v. Classic*, 313 U.S. 209.

The remaining questions presented are but two: Does the County Unit System as set out in the Neill Primary Act, amended, violate the right of plaintiff to equal protection of the laws under the Fourteenth Amendment or his right to vote for a United States senator under the Seventeenth Amendment. This latter right would reach the unit system

party who is not a qualified voter. Georgia Code §2-608, Constitution, Art. II [since repealed] Sec. I, Par. 8. The State furnishes its list of registered voters and these voters alone are declared entitled to vote in primaries as well as in general elections. Georgia Code, §34-405. And the State registrars are required to be at the court house during the voting hours of the primary as fixed by law §34-2001a, to make corrections in the list [since repealed] §34-411 (Supplement). The State requires the party to select election managers, and requires each manager to take an oath that he will fairly and impartially and honestly conduct the election according to the provisions of law. §34-3201. If a voter is challenged, they are required to administer to him an oath that he is duly qualified to vote 'according to the rules of the party, and according to the election laws of this State.' §34-3202. All the laws in reference to the qualification of voters and their registration are applied to primaries; and 'No person who is not a duly qualified and registered voter according to law' and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election' §34-3218. If the challenged voter swears falsely, the State will punish him. §34-9925. No one but a sworn manager can have any part in receiving or counting the votes. §34-3205. The managers must turn over tally sheets, lists of voters, ballots and other election papers to the Clerk of the Superior Court to be kept under seal until the next grand jury meets if no contest is filed. §34-3207. The managers are indictable for violation of their duty. §§34-9922, 34-9923. Generally all penal laws touching elections are extended to primaries, §34-9933, Supplement; and §34-9907."

only as to the primary election for the office of United States senator, while the former would reach it as to all statewide offices. A subsidiary question of prime, even overriding importance, is the test to be applied to determine violation, and the factors to be considered in making the test.

[fol. 231]

The Test to Be Applied

It must be borne in mind that the hearing just held is a hearing for a temporary injunction. Such a hearing differs very largely from a final hearing in equity on the merits of a case in that a plaintiff may be entitled to immediate relief where time is of the essence of the controversy, even before the parties are able to fully develop their case on the merits or before the trial court is able adequately to consider and make the proper judicial determination of all of the legal questions that arise. This case is an excellent illustration of the need for distinguishing between temporary and permanent relief. We do not doubt that the Fourteenth Amendment applies, and we proceed on that basis. We think the Court by its opinion in *Baker v. Carr* has now adopted the following test stated by Mr. Justice Douglas in *South v. Peters*, *supra*:

"Where nominations are made in primary elections, there shall be no inequality in voting power by reason of race, creed, color, or other invidious discrimination."⁹

⁹ Webster's International Dictionary gives the following definition for "invidious":

"1. Tending to excite odium, ill will, or envy; likely to give offense; esp., unjustly and irritatingly discriminating; as invidious distinctions."

The same dictionary gives the following definition for "discrimination":

"1. Act of discriminating, or state of being discriminated."

Referring to the definition of "discriminate" in the same dictionary, we find the following definition:

"1. Having the difference marked, distinguished by certain tokens; distinct."

[fol. 232] Having applied the equal protection clause of the Fourteenth Amendment to the rights of plaintiff in this suit, and having set aside for the purpose of this hearing and decision the other points raised by all parties, we apply the test of invidious discrimination. We need not apply it of course to the "time honored" system but to the system which is new as of yesterday. And as a part of the application of the test we hold that a political party may use a county unit system in primary elections for the nomination of candidates in the general election if the system, as we shall point out, does not run afoul of constitutional inhibitions.

A test for invidiousness must be formulated. Unlike per se invidiousness, springing from discrimination based on race, creed or color, we must here deal with discrimination not so infected, but arising out of a state legislative classification diffusing party political strength. The diffusion is between counties of all sizes, sparsely to densely populated, apparently on a rural-urban basis, but weighted from top to bottom, county by county, in favor of the next smaller.

We make the test on a consideration of all relevant factors, and these include rationality of state policy. See the concurring opinion of Mr. Justice Clark in *Baker v. Carr* where the dismissal of the appeal in *South v. Peters*, supra, was said to reflect the viewpoint of the Supreme Court "to refrain from intervening where there is some rational policy behind the State's system."

[fol. 233] Another test is whether or not the system is arbitrary. The right of plaintiff in this connection depends upon the treatment accorded his unit. His unit, Fulton County, must be related to the state as a whole in measuring his right, and his right is the same as that of all other Democrats in his unit. The fact that Echols or some other small county receives more than its share is of no concern to Fulton County so long as it is accorded proper treatment. And the consideration of this factor includes the applicability of the diffusion principle—the right of a state to properly diffuse "political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportuni-

ties for asserting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demand on the states." *MacDougall v. Green*, supra, at page 284. We have considered too the genesis of the System, whether or not it was for a fair purpose in the beginning—that it was is self-evident from the history heretofore set out.

Another important factor to be considered in making the test is whether or not the unit system has a historical basis in our political institutions, both federal and state. The primary in Georgia and elsewhere simply took the place of the convention. The county units took the place of county delegates. Counties were governmental units in Georgia before the Union and had their voice in the councils of government on the state level through representation, rationally apportioned, first on number of electors and later on population, but never in any exact proportion. And for many years governors were elected by these representatives. With the advent of popular elections of the governor and other state officials, conventions with delegate strength by party rule based on county apportionment in the House [fol. 234] of Representatives became the medium of nomination. Delegates were elected, not by direct primary, but at county mass meetings. This was followed by the county primary for the election of delegates—still in the ratio of legislative apportionment, and later by statewide primaries but still by party rule. And this finally became the statutory mode—as in the statute under attack here.

The national conventions of the great political parties use the congressional apportionment formula to a large extent in arriving at delegate strength. This gives some of the smaller states an advantage over the larger states and other factors, for example—the extra delegate bonus for party loyalty in past elections—cause a variance from exact apportionment.

The electoral college is not in exact proportion to population or voting strength but gives an advantage to the smaller over the larger. Recognizing that the electoral college was set up as a compromise to enable the formation of the Union among the several sovereign states, it still could hardly be said that such a system used in a state

among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious. See Wilmerding, *The Electoral College* (1958) for examples of inequities arising under that system. And at least one other state, Maryland, uses a County Unit System in primary elections. Rigdon, *supra*, pp. 70-73.

Another important consideration in making the test at least for the purpose of court intervention, is the presence or absence of political remedy. This lack is implicit in *Baker v. Carr*. Here we are not dealing with legislative apportionment but with the management of the state Democratic Party. Plaintiff as a Democrat is complaining of treatment received by him at the hand of other Democrats through the medium of a state statute, sponsored by a governor from his party and enacted by a legislature consisting of members of his party. A political remedy encompasses the give and take within the political arena, but we must consider it, and whether there is substantial likelihood under the existing system of plaintiff's obtaining such relief measures as may be needed to accord him his constitutional rights. We hold that there is not.

An additional factor of importance, and of which we are much aware, is the delicate relationship between the federal and state governments under the Constitution. It has long been the law that the violation in question must be clear before a federal court of equity will lend its power to the disruption of the state election processes.

The test is on the sum of all of these factors, and if the action—here the statute, complained of—offends what are thought to be fundamental political concepts, giving due regard to each factor and to the rights of plaintiff and all others in his suit as compared to the whole—the state, it must be stricken because of discrimination so excessive as to be invidious.

The Merits

The system as it existed prior to yesterday was violative of the right of plaintiff to equal protection of the laws. The system as it exists today is an improvement, and is the

result of an effort on the part of the responsible state officials and the General Assembly of Georgia within recent days to comport with sharp new legal precedents. But even the new system misses the mark in two respects: first in failing to accord the unit of plaintiff a reasonable proportion of the whole, and second in failing to accord the units representing a majority of the population a reasonable proportion of the whole. We do not strike the county unit [fol. 236] system as such. We do strike it in its present form.¹⁰

And while it may appear doctrinaire to some extent in the application of such broad constitutional rights as equal protection, *MacDougall*, supra, to state definite standards, we nevertheless, because, and only because, it is a question of much public moment, hold that a unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the whole vote for elec-

¹⁰ The following table will illustrate how under the recent statute the vote of each citizen counts for less and less as the population of the county of his residence increases, this table covering only the four largest and four smallest counties in comparison with Fulton, the largest:

| County Number | Name | Population | Number Unit Votes | Population per unit vote | Ratio to Fulton County |
|---------------|----------|------------|-------------------|--------------------------|------------------------|
| 1 | Fulton | 556,326 | 40 | 13,908 | |
| 2 | De Kalb | 256,782 | 20 | 12,839 | |
| 3 | Chatham | 188,299 | 16 | 11,760 | |
| 4 | Muscogee | 158,623 | 14 | 11,330 | |
| 156 | Webster | 3,247 | 2 | 1,623 | 8 to 1 |
| 157 | Glascock | 2,672 | 2 | 1,336 | 10 to 1 |
| 158 | Quitman | 2,432 | 2 | 1,216 | 11 to 1 |
| 159 | Echols | 1,876 | 2 | 938 | 14 to 1 |

There are 97 two-unit counties, totalling 194 unit votes, and 22 counties totalling 66 unit votes, altogether 260 unit votes, within 14 of a majority; but no county in the above has as much as 20,000 population. The remaining 40 counties range in population from 20,481 to 556,326, but they control altogether only 287 county unit votes. Combination of the units from the counties having the smallest population gives counties having population of one-third of the total in the state a clear majority of county units.

tors of the party in a recent presidential election; provided no discrimination is deemed to be invidious under the system if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress, and provided it is adjusted to accord with changes in the basis at least once each ten years. This is a "judicially manageable standard" contemplated in *Baker v. Carr*, supra.

[fol. 237]. Due consideration has been given to delaying the entry of an injunction until the next regular session of the General Assembly in January but having recognized the constitutional right of plaintiff, we cannot fail to protect it, nor do we believe the state would want to deny it in the fall primary.

An interlocutory injunction will be entered enjoining and restraining defendants from giving application to the County Unit System by statute or party rule in any election where the allocation of units falls short of this standard.

This 28th day of April, 1962.

Elbert P. Tuttle, Circuit Judge; Griffin B. Bell,
Circuit Judge; Frank A. Hooper, District Judge.

[fol. 238]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

v.

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

ORDER—April 28, 1962

The defendants, their agents, employees, successors and all persons in concert with them, are hereby enjoined until the further order of this Court from conducting any party primary election or giving effect to any party primary election so far as controls the counting of votes under a county unit system in compliance with the terms of the Neill Primary Act, as amended on April 27, 1962, by the General Assembly of the State of Georgia, or according to any [fol. 239] county unit method of counting votes, whether by virtue of statute or party rule, where the allocation of units violates the standards of allocation set forth in the opinion of the Court entered this date, to-wit: A county unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the vote for electors of the party in the most recent presidential election; provided, no discrimination is deemed to be invidious under such system if the disparity against any county is not in excess of the disparity that exists as

against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress of the United States, and, provided provision is made for allocations to be adjusted to accord with changes in the basis at least once each ten years.

This April 28, 1962.

Elbert P. Tuttle, United States Circuit Judge; Griffin B. Bell, United States Circuit Judge; Frank A. Hooper, United States District Judge.

[fol. 240]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 2, 1962

I

Parties Taking Appeal and Judgment Appealed From

Notice is hereby given that James H. Gray, Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee, The Georgia State Democratic Executive Committee, The Georgia State Democratic Party, and Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, defendants in the above matter, hereby appeal to the Supreme Court of the United States from the order granting interlocutory injunction rendered after notice and hearing on April 28, 1962, by a special three-judge [fol. 241] court convened pursuant to 28 USCA 2281, enjoining defendants from enforcing and giving effect to the provisions of statutes of the State of Georgia, Ga. Code Ann. Sections 34-3212 through 34-3218, inclusive, as amended, governing primary elections conducted by political parties, and requiring that all votes cast in such primaries be consolidated and tabulated according to the county unit method as therein prescribed.

This appeal is taken pursuant to 28 USCA 1253 authorizing direct appeals from interlocutory injunctions issued by special three-judge federal courts against the enforcement of state statutes on the ground of their unconstitutionality under the federal constitution.

II

Designation of Record

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The complaint and all amendments thereto.
2. The motion to dismiss filed by defendants.
3. The verified answer of defendants.
4. The request for admissions filed by plaintiff.
5. The answers thereto filed by all defendants.
6. Plaintiff's Exhibit 4, certificate of Fulton Registrar.
7. Plaintiff's Exhibit 8, affidavit of Gaylord.
8. Plaintiff's Exhibit 9, affidavit of Bonner.
9. Plaintiff's Exhibit 10, affidavit of Plaintiff Sanders.
10. Plaintiff's Exhibit 11, affidavit of William B. Hartsfield.
11. Plaintiff's Exhibit 12, affidavit of Gaylord.
- [fol. 242] 12. Plaintiff's Exhibit 13, affidavit of Hubert.
13. Plaintiff's Exhibit 14, affidavit of Hammer.
14. Plaintiff's Exhibit 15, certificate of Secretary of State, Registered Voters.
15. Plaintiff's Exhibit 16, certificate of Secretary of State, Registered Voters.
16. Defendants' Exhibit 1, consolidated returns.

17. The clerk will also transmit one of each of the following original documents (3 copies having been filed with the court by plaintiff):
 - (a) Plaintiff's Exhibit #1, U. S. Census, Population, Georgia, Number of Inhabitants
 - (b) Plaintiff's Exhibit #2, U. S. Census, Population, Georgia, General Characteristics
 - (c) Plaintiff's Exhibit #3, U. S. Census, Population, Georgia, General Social Characteristics
 - (d) Plaintiff's Exhibit #5, Report of State Auditor of Georgia 1961
 - (e) Plaintiff's Exhibit #6, Statistical Report of Department of Revenue
 - (f) Plaintiff's Exhibit #7, Rules of Democratic Party of Georgia, 1962
 - (g) Defendants' Exhibit #2, Census, Population of Georgia counties 1910 to 1960.
18. The decision of this Court and order granting interlocutory injunction rendered April 28, 1962.
19. This notice of appeal
20. Plaintiff's Exhibits #17 and #19, affidavits of Wilson Brooks and Leslie Gaylord, respectively.
21. Order convening a three-judge court
22. Plaintiff's Exh. 20.

III

Questions Presented

1. Whether the provisions of Georgia Code Ann., Sections 34-3212 through 34-3218, inclusive, as amended, requiring that votes cast in primary elections conducted by political parties for nomination of candidates for state office and United States Senator, deny to plaintiff the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 243] 2. Whether or not said statutes, as applied to primary elections conducted by political parties for nomina-

tion of candidates for the office of United States Senator, are unconstitutional as being in violation of the Seventeenth Amendment to the Constitution of the United States.

3. Whether or not the special three-judge district court erred in granting the interlocutory injunction.

4. Whether or not said court erred in not sustaining defendants' motion to dismiss.

5. Whether the constitutional adjudication here was premature in view of the fact that on the same day that this case was heard the statute under attack was amended so as to require that in any event before a candidate could be declared the nominee of the party as a result of the first primary he must not only receive a majority of the county unit votes, but also a majority of the popular votes cast.

6. Whether a state, consistently with the 14th and 17th Amendments, may insure an adequate diffusion of electoral power so as to achieve a reasonable balance between rural and urban areas.

Eugene Cook, Attorney General of Georgia; B. D. Murphy, Deputy Assistant Attorney General; E. Freeman Leverett, Deputy Assistant Attorney General; Attorneys for Defendant Ben W. Fortson, Jr., Secretary of State; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee and State Democratic Party.

[fol. 244] Stipulation as to Designation of
Record on Appeal

The undersigned, counsel for the respective parties, hereby stipulate pursuant to Rule 12 (3) of the Revised Rules of the Supreme Court of the United States that the record and proceedings designated in the foregoing notice of appeal shall be the portions of the record transmitted to the Clerk of the Supreme Court of the United States. It is further stipulated that either of the parties may refer to or reproduce in briefs any other portion of the record not desig-

nated or transmitted, and that either of the parties may cite in their briefs or otherwise insert in the record the allocation of unit votes received by each county under the 1962 Amendment to the Georgia Statutes, also, either party may refer to any volume of the Georgia Official and Statistical Register.

This May 1st, 1962.

Heyman, Abram, Young, Hicks & Maloof, Maurice N.
Maloof, Attorney For Plaintiff,
E. Freeman Leverett, Attorney for Defendants.

ORDER AS TO TRANSMITTAL OF ORIGINAL PAPERS

Pursuant to Rule 12 (4) of the Revised Rules of the Supreme Court of the United States, the Clerk of this court is hereby directed to transmit to the Clerk of the Supreme Court of the United States, the original papers as designated in Item 17 of Division II of the foregoing notice of appeal, said original papers to be returned to this court upon termination of the cause.

This May 2, 1962.

Elbert B. Tuttle, Judge, United States District Court.

[fol. 245] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION BY DEFENDANTS FOR STAY PENDING APPEAL—
Filed May 1, 1962

Come now defendants and move for a stay of the decree of this court rendered April 28, 1962, granting interlocutory injunction against defendants, and by way of grounds therefor, show as follows:

1.

Defendants are filing herewith a notice of appeal to the United States Supreme Court pursuant to 28 USCA

1253, seeking review and reversal of this court's interlocutory injunction granted April 28, 1962.

2.

Defendants show that they are moving with all possible diligence, and expect to have said case docketed in the Supreme Court, and jurisdictional statement filed therein within less than two weeks, and that defendants expect to file motion to advance so that said case may be heard and determined [fol. 246] prior to adjournment of the term.

3.

Defendants further show that the effect of the interlocutory decree entered April 28, 1962, is to enjoin the holding of a primary election for Governor, State House Officers and United States Senator in 1962 in a manner heretofore followed in Georgia by custom and practice for over 100 years, and by statute for over 40 years; that said primary is now set to be held on September 12, 1962; that substantial questions are involved in this appeal which have been previously considered only on one prior occasion by the Supreme Court, and on said occasion said question was decided in favor of the contention now urged by defendants, to wit, that a state may assure a proper diffusion of political power between its thinly populated counties and those having concentrated masses, *MacDougall v. Green*, 335 U. S. 281, 284 (1948); and that until said issue is finally determined in this case by the United States Supreme Court, the presumption of constitutionality accorded all states statutes, together with the rule that federal injunctive power should be sparingly exercised in state elections, *Wilson v. North Carolina*, 169 U. S. 586, 598 (1898), require that the interlocutory decree of this Court be stayed pending appeal.

Wherefore, defendants pray that this their motion be sustained, and that a stay be granted pending appeal pursuant to Rule 62, Fed. Rules Civ. Proc.

Eugene Cook, Attorney General of Georgia; B. D. Murphy, Deputy Assistant Attorney General; E. Freeman Leverett, Deputy Assistant Attorney General; Attorneys for Defendant Ben W. Fortson, Jr., Secretary of State; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee and State Democratic Party.

[fol. 247]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

OPPOSITION TO MOTION BY DEFENDANTS FOR
STAY PENDING APPEAL—Filed May 2, 1962

The plaintiff opposes the motion by defendants for stay pending appeal on the following grounds:

(1)

The stay requested is either unnecessary or its necessary effect would be to deprive the plaintiff of his constitutional rights which the Court has previously adjudicated.

(2)

The stay is not necessary to afford the defendants a right of appeal. This is a case in which a direct appeal may be made to the United States Supreme Court, which Court is now in session and will remain in session until sometime in June (Hartsfield v. Sloan, 357 U.S. 916, commenced in April, 1958, was decided as late as June 16, 1958). If that Court believes that there is merit in the appeal of defendants, it may grant a motion to advance and decide the appeal well before the date on which the injunction entered would have any effect upon the defendants whatever. If, [fol. 248] on the other hand, the Supreme Court believes that there is no merit in the defendants' appeal, a stay entered by this court could have the effect of denying to the plaintiff the rights which the Court adjudicated were his on April 28, 1962.

(3)

This Court has recognized the fact that in this case delay in the granting of relief is a denial thereof. In its opinion of April 28, 1962, the Court states:

"Due consideration has been given to delaying the entry of an injunction until the next regular session of the General Assembly in January but having recognized the constitutional right of plaintiff, we cannot fail to protect it, . . ."

Wherefore, plaintiff prays that the motion by defendants for stay pending appeal be denied.

Heyman, Abram, Young, Hicks & Maloof, By Morris B. Abram, Maurice N. Maloof, Attorneys for Plaintiff.

Service omitted.

Filed May 2, 1962.

[fol. 249]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR STAY—May 4, 1962

After hearing argument of counsel on the motion of defendants for stay pending appeal,

It Is Considered, Ordered and Adjudged that said motion is hereby overruled and denied.

This 4th day of May, 1962.

Elbert P. Tuttle, United States Circuit Judge; Griffin B. Bell, United States Circuit Judge; Frank A. Hooper, United States District Judge.

Filed May 4, 1962.

[fol. 250] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 251]

SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION AND DENYING
MOTION TO ADVANCE—June 18, 1962

Appeal from the United States District Court for the Northern District of Georgia.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The motion to advance is denied.

June 18, 1962

Mr. Justice Harlan would note probable jurisdiction and deny the motion to advance, with leave to the appellants to apply to this Court for a stay of the injunction order of the District Court pending determination of this appeal.

Mr. Justice Frankfurter took no part in the consideration or decision of this case.

MAY 11 1962

JOHN E. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No.

JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee;
GEORGE D. STEWART, as Secretary of the Georgia State
Democratic Executive Committee;
THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,

vs.

JAMES O'HEAR SANDERS,
Appellee.

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

**MOTION TO ADVANCE AND STATEMENT
AS TO JURISDICTION.**

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ocratic Executive Com-
mittee and State Dem-
ocratic Party.

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| McGowan v. Maryland, 366 U. S. 420, 6 L. Ed. 2d 393 (1961) | 14 |
| Oklahoma Gas and Electric Co. v. Oklahoma Packing Co., 292 U. S. 386, 78 L. Ed. 1318 (1934) | 7 |
| Palmetto Fire Ins. Co. v. Conn. 272 U. S. 295, 305, 71 L. Ed. 243 (1926) | 7 |
| Radford v. Gary, 145 F. Supp. 541, 546 (D. C. Okl. 1956), aff'd 352 U. S. 991 (1957) | 14 |
| Remmey v. Smith, 102 F. Supp. 708, 712 (D. C. Pa. 1951) app. dismissed, 342 U. S. 916 (1952) | 14 |
| Salsburg v. Maryland, 346 U. S. 545, 551, 98 L. Ed. 281 (1954) | 14 |
| Scholle v. Hare, 360 Mich. 1, 104 N. W. 2d 63, 93 (1960), remanded, 30 L. W. 3332 (1962) | 14 |
| South v. Peters, 89 F. Supp. 672 (D. C. Ga. 1950), affirmed, 339 U. S. 276 (1950) | 2, 13, 14 |
| Turman v. Duckworth, 68 F. Supp. 744 (D. C. Ga. 1946), app. dism. 329 U. S. 675 (1946) | 2, 13 |
| United States v. Classic, 313 U. S. 299, 85 L. Ed. 1368 (1941) | 15 |

Statutes Cited.

| | |
|---|-----------------|
| Georgia Code Ann., Sections 34-3212 through 34-3218 | 6, 7, 9, 10, 12 |
| Georgia Laws 1961, p. 111 | 11 |
| Georgia Laws 1962, p. 15 | 9 |
| 28 U. S. C. A., Section 1253 | 7 |
| 28 U. S. C. A., Section 2281 | 2, 5, 7 |
| 28 U. S. C. A., Section 2284 | 2, 7 |

Constitutions Cited.

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|----------------------------------|---|
| Constitution of Georgia: | |
| Art. III, Sec. IV, Par. II | 9 |
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| Art. III, Sec. III, Par. II | 11 |
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Miscellaneous Cited.

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No.

**JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee;
GEORGE D. STEWART, as Secretary of the Georgia State
Democratic Executive Committee;
THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,**

vs.

**JAMES O'HEAR SANDERS,
Appellee.**

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

MOTION TO ADVANCE.

To the Honorable Earl Warren, Chief Justice, and The
Associate Justices of the Supreme Court of the United
States:

Come now Appellants and move the court to advance
consideration of the appeal of Appellants in the event that
probable jurisdiction is noted, and to assign said matter
for a special hearing at such early date during the present
term as may be convenient, and by way of grounds there-
for, show as follows:

1.

The appeal here is from an interlocutory injunction
rendered by a special three-judge district court convened

pursuant to 28 U. S. C. A., Sections 2281, 2284, declaring unconstitutional Georgia statutes governing primary elections conducted by political parties, and enjoining Appellants from enforcing and giving effect to said statutes in the Democratic primary set to be held September 12, 1962; for nomination of candidates for Governor, United States Senator, and other state house offices.

2.

The complaint below was filed March 26, 1962, heard by the court on April 27, 1962; and decision and decree were rendered therein on Saturday afternoon, April 28, and Appellants herein acted with all due diligence and dispatch by filing notice of appeal and stipulation as to record on appeal on May 1, 1962.

3.

Notwithstanding the diligence of Appellants as hereinbefore shown, the case is in danger of becoming moot through no fault of Appellants, in that unless this court acts without delay, the primary now set for September 12 will be held, if at all, under the court decree hereinbefore referred to, in a radical manner contrary to that prevailing in Georgia by custom and practice for over 100 years, and by statute for over 40 years.

4.

The decision of the court below is directly contrary to two prior decisions of special three-judge federal courts in **Turman v. Duckworth**, 68 F. Supp. 744 (D. C. Ga. 1946), app. dismissed, 329 U. S. 675 (1946); and in **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), affirmed, 339 U. S. 276 (1950). Moreover, subsequent to the above decisions, and on the same date that this case was heard, the General

Assembly of Georgia amended the statutes in question so as to accord the more populous counties a greatly increased percentage of the county unit votes throughout the state, thereby rendering said statutes more immune from constitutional attack than when the two decisions hereinbefore referred to were rendered.

5.

Appellants show that the hearing in this case occupied all of the day of April 27, and was not terminated until after 5 o'clock P. M., notwithstanding which the 28 page decision and decree was rendered the following day at 2 o'clock P. M., at which time some 15 or more copies had already been prepared for distribution to the news media.

6.

The questions involved in this case are substantial, and are of the utmost importance to the State of Georgia. The nature of the issues, the summary treatment accorded below, the fact that the statutes in question were upheld on two previous occasions by three-judge federal courts after much more study and deliberation, all require that this case be considered on the merits before mere lapse of time thwarts the state policy and renders moot what may well be one of the most significant issues to come before this court in many years.

Wherefore, Appellants, Movants herein, pray:

1. That probable jurisdiction be noted without delay.

2. That the Court advance consideration of the Appeal for oral argument to such convenient date during this term as will enable final disposition thereof in

sufficient time prior to September 12 so as to enable responsible officials to be properly apprised of the manner in which said primary may be conducted.

Respectfully submitted,

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IN THE
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THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,
vs.
JAMES O'HEAR SANDERS,
Appellee.**

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

STATEMENT AS TO JURISDICTION.

In compliance with Rules 13 and 15 of this court, James H. Gray, et al., Appellants, submit herewith this statement, particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the interlocutory injunction issued by a special three-judge court, convened pursuant to 28 U. S. C. A. 2281, enjoining appellants (defendants below), including appellant Fortson, who is Secretary of State of the State of Georgia, from enforcing and giving effect

to certain statutes of the State of Georgia, requiring that primary elections conducted by political parties be held pursuant to the county unit method.

OPINIONS BELOW.

The opinion of the special three-judge federal court, rendered April 28, 1962, is not yet reported. Said opinion and the interlocutory decree issued therewith are appended hereto as "Appendix A".

BASIS OF JURISDICTION.

I.

This case is an action brought by appellee, a resident of Fulton County, Georgia, against the Democratic party of Georgia and certain of its officials, and Ben W. Fortson, Jr., Secretary of State of Georgia, attacking the constitutionality under the Fourteenth and Seventeenth Amendments to the Constitution, of statutes of the State of Georgia, Code Ann., Sections 34-3212 through 34-3218, as amended. These statutes provide that any political party conducting a primary election for nomination of candidates for United States Senator, Governor and other state house offices, consolidate and tabulate the votes cast therein according to the "county unit" method. The court below held the statutes in their present form to be unconstitutional as effectuating an invidious discrimination against plaintiff and other voters residing in the more populous counties of the state.

II.

Interlocutory injunction was rendered by the District Court on April 28, 1962. Notice of appeal was filed in said court on May 1, 1962.

III.

The jurisdiction of this court to review on appeal the interlocutory injunction rendered by the District Court is conferred by 28 U. S. C. A., Sections 1253, 2281, 2284.

IV.

Cases which sustain the jurisdiction of this court to review on direct appeal the final judgment of the special three-judge district court are: **Oklahoma Gas and Electric Co. v. Oklahoma Packing Co.**, 292 U. S. 386, 78 L. Ed. 1318 (1934); **Palmetto Fire Ins. Co. v. Conn.**, 272 U. S. 295, 305, 71 L. Ed. 243 (1926); **Hays v. Port of Seattle**, 251 U. S. 233, 64 L. Ed. 243 (1920).

V.

The Georgia statutes, the validity of which are drawn in question in this case, are Georgia Code Ann., Sections 34-3212 through 34-3218, inclusive, particularly Sections 34-3212 and 34-3213, as amended by an act approved April 27, 1962 (Ga. Laws 1962, Ex. Sess., p. . .). These statutes are set forth in "Appendix B".

QUESTIONS PRESENTED.

1. Whether a county unit method of conducting primary elections for nomination of candidates for Governor, United States Senator and other state house offices, in force by custom and practice for over 100 years, and by statute for 45 years, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether said statutes, as applied to primary elections conducted by political parties for nomination of candidates for United States Senator, violate the Seven-

teenth Amendment to the Constitution of the United States, requiring that elections for Senator be "by the people".

3. Whether the constitutional adjudication here was premature in view of the fact that on the same day that the case was heard, an amendment to the statute under attack was enacted which required that in any event before a candidate could be declared the nominee of the party as a result of the first primary, he must not only receive a majority of county unit votes, but also a majority of all popular votes cast, failing whereof a run-off primary would be conducted between the candidates receiving the highest unit vote and popular vote, respectively.

4. Whether the court below erred in granting an interlocutory injunction against enforcement of the state statutes in question.

5. Whether the court below erred in refusing to dismiss the complaint on motion by defendants.

6. Whether a state, consistently with the Fourteenth and Seventeenth Amendments, and in view of the fact that final election is by popular vote, may insure an adequate diffusion of electoral power so as to achieve a reasonable balance between rural and urban areas, by requiring that primary elections conducted by political parties be conducted and the votes cast therein be consolidated and tabulated according to the county unit method, whereby each county is assigned a prescribed number of unit votes, to be received by the candidate receiving a plurality of popular votes cast in each such county, the unit votes being allocated among the counties according to population pursuant to a bracket system graduated with each succeeding higher population bracket.

STATEMENT OF THE CASE.

This case is an appeal by the Democratic Party of Georgia and its designated officials, and the Secretary of State of Georgia, from an interlocutory injunction rendered by a special three-judge district court, declaring unconstitutional in part certain Georgia statutes¹ governing conduct of primary elections, and enjoining said officials from enforcing and giving effect to said statutes in the state-wide primary set by law² to be held on September 12, 1962, for nomination of candidates for Governor, United States Senator, and various state-house offices. The General Election is to be held on the Tuesday, after the first Monday in November, 1962.

On March 26, 1962, the same date of this court's decision in **Baker v. Carr**, 369 U. S. 186, plaintiff, appellee herein, filed complaint in the District Court for the Northern District of Georgia, alleging that he was a citizen and registered voter in Fulton County, Georgia, the state's most populous county; that he plans to vote in the Democratic primary on September 12, 1962; that defendant party and its officials are undertaking to conduct said primary in accordance with the "county unit" method as prescribed by statute; that defendant Fortson as Secretary of State will certify the names of the Democratic nominees so chosen to the several ordinaries for insertion on the general election ballot; and that said statutes are violative of plaintiff's rights under the Fourteenth and Seventeenth Amendments to the Constitution of the United States. Various allegations are made undertaking to

¹ Ga. Code Ann., Sections 34-3212 through 34-3218, as amended, set forth in Appendix B.

² Ga. Laws 1962, p. 15.

³ Ga. Constitution, Art. III, Sec. IV, Par. II; Art. V, Sec. I, Par. II.

demonstrate the manner in which it is alleged said statutes discriminate against voters in the more populous counties. Interlocutory and permanent injunction, declaratory judgment and convening of a special three-judge court were prayed.

A special three-judge court was convened, and the matter came on for hearing on April 27, 1962, defendants having filed answer and motion to dismiss.

In the meantime, the General Assembly of Georgia had met in extraordinary Session on April 16, to consider legislative reapportionment and revision of the statutes governing primary elections. This Session culminated on April 27, with an amendment materially altering the very statutes attacked in the complaint, the amendment having been enacted and signed into law while arguments before the court below were in progress.

Georgia law does not require that nominations by political parties be by primary. The statutes under attack do provide, however, that if a primary is held, the votes cast therein must be consolidated and tabulated according to the "county unit" method, under which each county is assigned a certain number of unit votes. The candidate for any given office receiving a plurality of popular votes in any county is deemed to have carried such county, and is entitled to the full unit vote of such county. With respect to Governor and United States Senator, the candidate receiving a majority of the county unit votes over the entire state is entitled to receive the nomination. With respect to other state house offices, only a plurality is required.⁴ The unit votes allocated to each of the state's 159 counties were allocated on the basis of the representation accorded each county in the House of Representatives

⁴ Ga. Code Ann. 1961 Cum. Pocket Part, Sec. 34-3212. The 1962 amendment now requires a majority as to all offices affected thereby, and not just Governor and Senator.

of the General Assembly, each county receiving 2 unit votes for each member of the House.⁵

Such was the state of the law when the complaint was filed. However, as previously noted, the law was amended by the General Assembly while the case was being argued. The effect of this amendment was to raise the total unit vote from 410 to 547, and to accord the larger counties substantially more unit strength. For example, Fulton County was raised from six to forty units. Under the 1962 amendment, unit votes were no longer tied to representation in the House of Representatives, but a bracket system was prescribed which gradually reduced the percentage of unit votes per given number of persons in each succeeding larger population bracket.

Another very substantial change was made in the law. In order to be elected at the first primary, the law as amended required that a candidate receive not only a majority of unit votes, but, also a majority of popular votes. If any candidate failed to so do, a second or run-off primary was required to be held between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes.⁶ The candidate receiving the highest number of unit votes in

⁵ There are 205 members of the House of Representatives, thereby resulting in 410 unit votes prior to the 1962 amendment. These 205 representatives are apportioned by the Constitution as follows: To the eight most populous counties, three representatives each; to the thirty counties having the next largest counties, two representatives each, and to the remaining 121 counties, one representative each. Ga. Const., Art. III, Sec. III, Par. I. This apportionment is required to be changed every ten years within the limits of the above formula. Id., Par. II, and unlike the situation in *Baker v. Carr*, this course uniformly has been followed. See, e. g., Ga. Laws 1961, p. 111.

⁶ In the event one candidate received both the highest unit vote and the highest popular vote, the law specifies that he runs in the second primary against the candidate receiving the next highest popular vote.

the second primary prevails. Code Ann., Section 34-3212, 34-3213, as amended (Ga. Laws 1962, Ex. Sess., p. ...).

The district court below was advised of passage and approval of this amendment during oral arguments, whereupon defendants moved for dismissal on the grounds that the case was thereby rendered moot; that the constitutional challenge to the statutes was premature, and would not be ripe for determination until a situation arose requiring a run-over.⁷ This motion was overruled.

On the day following arguments, the court rendered decision declaring the statutes unconstitutional in their present form, and granting interlocutory injunction against their enforcement. The court did not invalidate the county unit system *per se*. It held that as presently constituted, the statute effectuated an invidious discrimination in failing to accord the more populous counties a larger percentage of the unit vote.⁸

⁷ Because of the urgency of the issues involved and the imminency of the September primary, the transcript of proceedings, containing argument almost exclusively, was not designated to be sent up. However, the parties stipulated that such matters might be referred to on appeal. See notice of appeal, "Stipulation as to Designation of Record on Appeal".

⁸ Plaintiffs' contentions below were three-fold: (1) The statutes deny equal protection because of "reversal" of the vote of a voter in any county casting his vote for a candidate who did not receive a plurality of popular votes in that county; (2) The statutes deny equal protection because of "dilution" of the votes in the more populous counties as compared to the smaller counties. In this respect, plaintiff contended alternatively that (a) any dilution was constitutionally impermissible, and (b) in any event, the disparity here was so great as to be "invidious"; (3) The statutes violate the Seventeenth Amendment requiring that senators be "elected by the people".

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The effect of the decision below is to strike down a system of primary elections in effect in Georgia by custom and practice for more than 100 years, and by statute for over 40 years.⁹ A primary election is imminent, required by law to be held on September 12.

Unless this court acts without delay to consider the issue on the merits, a primary election for Governor, United States Senator, and all other state house officers will be held, contrary to the express wishes of the law-making power of a state. This radical departure will emanate from a federal court decree the correctness of which may never be determined simply because events transpiring under and in accordance therewith have rendered the issue moot, in the same sense that execution of a prisoner under a void sentence renders irrelevant the correctness vel non of that sentence.

This court has never passed upon the validity on the merits of Georgia's county unit law even in its original form, unless as Mr. Justice Clark indicates in his concurring opinion in **Baker v. Carr**, supra, the affirmance in **South v. Peters**, 329 U. S. 276, 94 L. Ed. 834 (1950), was a decision on the merits (See 7 L. Ed. 2d at 706). In two other cases, appeals attacking the law were dismissed, **Cook v. Fortson**, 329 U. S. 675, 91 L. Ed. 596 (1946); **Cox v. Peters**, 342 U. S. 936, 96 L. Ed. 697 (1952), and in another case, mandamus to require convening of a three-judge court was denied. **Hartsfield v. Sloan**, 357 U. S. 916, 2 L. Ed. 2d 1363 (1958).

However, the validity of the law was upheld on three occasions, once in **Turman v. Duckworth**, 68 F. Supp.

⁹ See Opinion of the Court, Appendix A.

744 (D. C. Ga. 1946), the court declaring, "our system of government, state and federal, has never sought or demanded that each voter should have equal voting influence, though that might seem an ideal of democracy"; a second time in **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), the court declaring that "the constitution is not committed to elections by the people over the whole affected territory in which every vote will have equal weight, but rather the voting is by smaller units of unequal population and unequal voting power for each vote"; and a third time in **Cox v. Peters**, 208 Ga. 498, 67 S. E. 2d 579 (1951).

And, as held by this court in **MacDougall v. Green**, 335 U. S. 281, 284, 93 L. Ed. 3 (1948), due process and equal protection should not be used so as to deny a state the power to assure a proper diffusion of political power as between its thinly populated counties and those having concentrated masses, "in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former," and see **The Federalist**, No. 10; **Radford v. Gary**, 145 F. Supp. 541, 546 (D. C. Okl. 1956), aff'd 352 U. S. 991 (1957); **Remmey v. Smith**, 102 F. Supp. 708, 712 (D. C. Pa. 1951), app. dismissed, 342 U. S. 916 (1952); **Scholle v. Hare**, 360 Mich. 1, 104 N. W. 2d 63, 93 (1960), remanded, 30 L. W. 3332 (1962); **Dyer v. Kazuhisa Abe**, 138 F. Supp. 220, 234 (D. C. Hawaii 1956), dismissed, 256 F. 2d 728 (C. A. 9th 1958). Equal protection refers to persons, not geographical areas, and its requirements are satisfied if all persons within the given area are treated equally. **Salsburg v. Maryland**, 346 U. S. 545, 551, 98 L. Ed. 281 (1954); **McGowan v. Maryland**, 366 U. S. 420, 6 L. Ed. 2d 393 (1961).

Nor is this case similar to **Baker v. Carr**, supra, for here the State Constitution and laws were being followed in every respect, and the amendment of the law giving the

more populous counties greater voting strength refutes any assertion that plaintiff was without remedy.¹⁰

As to the Seventeenth Amendment, it is enough to say that assuming plaintiffs' contention to be correct as to the meaning of "by the people," it would produce the absurd result wherein candidates seeking nomination for U. S. Senator could not be nominated by the convention system in any state where the nominating process was considered an integral part of the election machinery. Cf. **United States v. Classic**, 313 U. S. 299, 85 L. Ed. 1368 (1941).

Lastly, the constitutional adjudication here was premature. If a candidate received a majority of both popular and unit votes in the first primary, he would be elected, in effect, under a popular vote basis. If a run-off primary were held, election would then be on a unit vote basis, but even then, the candidate receiving a majority of unit votes may well receive also a majority of popular votes, as has often been the case in the past. Consequently, the court erred in refusing to dismiss the complaint, for "determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial

¹⁰ In 1917, when the county unit method was enacted into law, the 8 largest counties had about 10.4% of the unit vote, and 19.6% of the population, giving a ratio of equality of .53. After the 1962 amendment, the 8 largest counties had 24.2% of the unit vote and 41.3% of the population, giving a ratio of equality of .585—an improvement over the act as originally enacted, as to the larger counties. Under the 1962 amendment, the average population per unit vote is 7210 persons. In Fulton County, the most populous county, the population per unit vote is 13,908, a disparity of 1 to 1.93. Under the electoral college, the disparity as between California and the average for the country as a whole in 1960 was 1 to 1.47. Under the formula laid down by the court below, the constitutionality of Georgia's county unit system would vary from year to year, and what is today held void may be valid a few years hence assuming shifts in the electoral college.

function." **International Longshoremen's and Warehousemen's Union v. Boyd**, 347 U. S. 222, 224, 98 L. Ed. 650 (1954).

Therefore, since the statutes here were not unconstitutional as alleged, and since in any event the controversy was not ripe for adjudication, the district court erred in granting an interlocutory injunction.

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EXHIBIT A.

Opinion and Decree of Court Below.

In the
UNITED STATES DISTRICT COURT
For the Northern District of Georgia.

Civil Action No. 7872.

James O'Hear Sanders,
Plaintiff,

v.

James H. Gray, as Chairman of the Georgia State Democratic Executive Committee;
George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee;
The Georgia State Democratic Executive Committee;
The Georgia State Democratic Party; and Ben. W. Fortson, Jr., as Secretary of State of the State of Georgia,
Defendants.

Before Tuttle and Bell, Circuit Judges, Hooper, District Judge.

Bell, Circuit Judge:

Plaintiff seeks declaratory and injunctive relief alleging deprivation of federal constitutional rights. The prayer seeks to restrain the Georgia State Democratic Party and the Chairman and Secretary of the Georgia State Democratic Executive Committee in their representative capacities, and their successors in office, from conducting elections under the County Unit System; from tabulating and

consolidating ballots cast in the democratic primary election to be held on September 12, 1962, and in any other primary election conducted by that party on the basis of the County Unit System; from selecting any nominee on the basis of ballots cast in any primary election held on the County Unit System; from publishing or certifying the nomination of any candidate for United States Senator, Governor, Lieutenant Governor, Justice of the Supreme Court, Judge of the Court of Appeals, Secretary of State, Attorney General, Comptroller General, Commissioner of Labor, and State Treasurer on the basis of the County Unit System; and from giving force and effect to the County Unit System as it is established under the Neill Primary Act, §§ 34-3112 through 34-3218 (Ga. Code Annot. Supp.), Georgia Laws, 1917, p. 183, et seq., Ga. Laws, 1950, p. 79, et seq. The prayer is also to restrain the Secretary of State of Georgia, and his successors in office, from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to state-wide offices who shall have been nominated in any primary held by the Democratic Party under the County Unit System; and from furnishing to the several ordinaries official ballots and election supplies whereon nomination under the County Unit System is recognized. Lastly Plaintiff seeks judgment to the effect that the Neill Primary Act is void and unconstitutional insofar as it provides for the nomination by the defendant party of any candidates for the named offices under the County Unit System.

Plaintiff is an elector within the meaning of Article II, § 1, Paragraphs I through IV of the Constitution of the State of Georgia of 1945, Ga. Code, §§ 2-701 through 2-704. He is qualified to vote in primary and general elections in Fulton County, is a member of the Democratic Party of Georgia, intends to vote in the democratic primary election to be held within the State of Georgia in 1962 and intends to support the nominees of such primary in the general

election to be held on the Tuesday after the first Monday in November, 1962.

Defendant Democratic Executive Committee, an unincorporated association, is the governing body of the defendant Democratic Party of Georgia, also an unincorporated association, and which is composed of many thousands of persons residing throughout the State of Georgia. Defendants Gray and Stewart are Chairman and Secretary, respectively, of the Executive Committee. Defendant Fortson is Secretary of State of the State of Georgia.¹

Defendant Committee, as the governing body of defendant party, intends to supervise the holding of the primary election, to tabulate and consolidate the ballots cast therein and to certify to defendant Secretary of State the names of persons determined by that committee to have been nominated in the primary election, all as provided by the statutes of Georgia. The Secretary of State, pursuant to statute, will furnish to the several ordinaries of the State of Georgia official ballots and election supplies and will certify to the ordinaries the names of the candidates nominated in the primary. The ordinaries will in turn submit the names of the candidates to the electors of the State of Georgia for their choice in the general election in November.

Plaintiff contends in his suit that the County Unit System is arbitrary and discriminatory to the extent that it is a denial to him of equal protection of the laws within the

¹ The facts in this memorandum opinion are to be considered as findings of fact within the meaning of Rule 52 (a), Fed. R. Civ. P., cf. *Myles v. Quinn Menhaden Fisheries, Inc.*, No. 19256, 5 Cir. 1962, ... F. 2d ... and are based on the verified pleadings, and the evidence submitted on the hearing, together with liberal use of our right to take judicial notice of matters of common knowledge and public concern. 31 C. J. S., Evidence, §§ 6-27, 32, 37; 40-43, 51, 58-61, 97, 98.

meaning of the Fourteenth Amendment to the Federal Constitution in that Fulton County where he resides, the largest county in Georgia, is allotted only six unit votes under the statute which in total allows six unit votes each for the eight largest counties by population in Georgia, four unit votes for each of the thirty next largest by population and two each for the remaining one hundred twenty-one counties. According to the 1960 United States census Fulton County had a population of 556,326 while Georgia had a total population according to the same source of 3,943,116. Fulton County thus having 14.11 percent of the total population of Georgia but only 1.46 percent of the total of 410 county unit votes. On the other hand, the least populous county in Georgia, Echols, had a population according to the 1960 census of 1876 or .05 percent of the population in the state, and is accorded two units or .48 percent of the total units. Thus the discrimination runs against Fulton County on an approximate ten to one ratio based on population and in favor of Echols County on an approximate ten to one ratio. The discriminatory ratio under the County Unit System runs, based on the 1960 census, between these ranges but in every instance against Fulton County. The Unit System also accords to the candidate receiving the plurality of votes in a county the entire unit vote thus reversing the votes of those voting for another candidate just as is the case under the Federal Electoral College System.

Plaintiff asserts, in addition to his Fourteenth Amendment claim, that the system violates the Seventeenth Amendment which provides that the Senators from each state shall be elected by the people thereof.

He alleges that he is without adequate remedy at law in view of the holding of the Supreme Court of Georgia in the case of **Cox v. Peters**, 1951, 208 Ga. 498, 67 S. E. 2d 579, appeal dismissed, 342 U. S. 936 (1952), that an action

at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System. Jurisdiction and three-judge status is based on Title 28, U. S. C. A., §§ 1343, 2201-2202, 2281 and 42 U. S. C. A., § 1983.

History of the County Unit System.

The County Unit System throughout its long use in primary elections in Georgia, first by party rule and later by statute, has always been based on the formula obtaining for apportionment of the House of Representatives.² Thus we look first to the history of apportionment in the House of Representatives of Georgia. Eight counties were established under the first state constitution, 1777, from which representatives were to be elected annually by the voters; Liberty County electing fourteen representatives, Glynn and Camden one each, the other counties ten each, with the Port and Town of Savannah to have four to represent their trade and the Port and Town of Sunbury to have two to represent their trade. Glynn, Camden and all counties thereafter laid out were to have one representative provided there were ten electors in the county,

² We are not aware that the statutory primary election has ever been used by any party other than the Democratic Party although it is available to all. The County Unit System is compulsory to all parties holding primary elections.

The Republican party of Georgia, although until this year it has apparently not actually nominated any one for statewide office during this century, uses the convention system for nominating for state office in presidential election years. The convention also selects a State Central Committee which has the power to nominate candidates between quadrennial conventions, which are held during presidential election years. Delegates are elected from each county at mass meetings to the state convention. The mass meeting must meet statutory requirements, Georgia Code, §§ 34-3401, 3402. The number of delegates per county to the state convention is, except for extra delegates given to counties voting Republican in the preceding election, in ratio to the number of Republican votes cast in the county in the last general election. See Gosnell and Anderson, *The Government and Administration of Georgia*, 1956, p. 37.

then two representatives for thirty electors, three for forty, four for fifty, six for eighty, and ten for a hundred or more electors. After reaching a hundred electors a county would be entitled to two executive councilors among the number of representatives. These representatives were to meet and from their number select two from each county to constitute a Council and to elect a governor. The remaining representatives were to constitute the "house of assembly". Georgia Const. of 1777, Articles II-V; McElreath on the Constitution of Georgia (1911), pp. 230-231; **South v. Peters**, N. D. Ga., 1950, 89 F. Supp. 672.³ It was under this constitution that Georgia ratified the Federal Constitution and entered the Union on January 2, 1788.

The Constitution of 1789 was then adopted. It created a general assembly consisting of a senate and house of representatives. Each county was to have one member of the Senate with terms of three years. The Members of the House were elected annually from each of the then existing eleven counties with Camden, Glynn, Effingham, Washington, Greene, and Franklin having two each, Burke, Liberty, and Richmond having four each, and Chatham and Wilkes five each, making a total of thirty-four. A governor was to be elected by the Senate each two years from three persons nominated by the House of Representatives. Georgia Constitution of 1789, Article I, §§ 1-6, Article II, § 2; McElreath, pp. 242, 243, 245; **South v. Peters**, supra.

Under the Constitution of 1798 the principle was declared that representation in the House should thereafter be according to population on an enumeration to be made each seven years, and on the basis that population of

³ The right to vote under this Constitution was restricted to white males who owned property of a value of ten pounds, or who had a mechanic's trade and anyone who failed to vote was fined five pounds. Arts. IX, XII.

3,000 would entitle a county to two members of the House, 7,000 to three members, and 12,000 or over to four members, with each county to have at least one and not more than four. Constitution of 1798, Article I, § 7; McElreath, p. 252. As was said in **South v. Peters**, this plan was an evident reflection of Article I, § 2, cl. 3 of the Federal Constitution, fixing the apportionment of representatives in Congress among the states.

The governor was to be elected by the General Assembly on joint ballot, and there were popular elections only by counties. Article II, § 2; McElreath, p. 259. In 1823 the Constitution was amended to provide, beginning in 1825, that the governor should be elected each two years by persons qualified to vote for members of the General Assembly, and if no candidate had a majority of the votes the General Assembly would elect the governor by joint ballot. McElreath, p. 273.

By an amendment proposed and assented to in 1842 and confirmed in 1843, forty-seven senatorial districts were created and the number of representatives was fixed at 130, each county to have one, with no county to have more than two; the 37 counties having the greatest population were to have two each, with reapportionment to be made after each census. McElreath, p. 277. The same basis of House apportionment was carried forward, after secession, in the Georgia Confederate Constitution, Const. of 1864, Article II, § 3, par. 1; McElreath, p. 286, and in the Constitution of 1865, adopted upon the cessation of hostilities and during the Presidential Reconstruction of Georgia. Const. of 1865, Article II, § 3, par. 1; McElreath, p. 304.

The Constitution of 1868 was adopted during the second or Congressional Reconstruction and as a prerequisite to the end of the occupation of Georgia by Federal troops.*

* See, A Constitutional History of Georgia, pp. 256, 272.

It provided the three-two-one formula of apportionment in the House, which is still in use in Georgia. The House was to consist of 175 members, apportioned three each to the six largest counties, two each to the thirty-one next largest, and one each to the remaining counties. The apportionment might be changed after each federal census but the total membership was not to be increased. Constitution of 1868, Article III, § 3, par. one; McElreath, p. 327.

Fulton had the smallest population of any of the six largest counties, Chatham, Richmond, Burke, Bibb and Houston being larger in that order. They each had 1.7 percent of the House representation. Fulton had only 1.36 percent of the total population while, for example, Chatham had 2.9 percent and Richmond 2.0 percent of the population. Compendium, 9th Census of the U. S. Fulton had an equality ratio based on population of 121 percent. Stated differently, Fulton had 121 percent of the number of representatives while being entitled to 100 percent on a pure population basis. On the other hand, Chatham County had an equality ratio of only 59 percent while that of Richmond was 85 percent.

The Constitution of 1877 was next adopted and it was followed by the Constitution of 1945. The apportionment formula was changed by the Constitution of 1877 to the extent that it reduced the number of two representative counties from thirty-one to twenty-six. Changes in the total number of representatives were made from time to time because of the creation of new counties and the total was 189 at the time of the adoption of the Neill Primary Act in 1917. The situation with respect to the creation of new counties stabilized and the last county to be created in Georgia was Peach in 1924, making a total of 161 counties. Since then two counties have been abolished by merger with Fulton (Milton and Campbell) but Fulton

did not get their representation. Since 1920 the formula has been three representatives on the basis of population for the eight largest counties, two for the thirty next largest and one each for the balance. Reapportionment within the limits of the formula on population was mandatory after each Federal census and has been effected to date. The Constitution of 1877, Article III, § 3, pars. 1, 2; McElreath, p. 358.

We turn now to the history of primary elections held by the Democratic Party in Georgia. Prior to the Civil War the predominant parties in Georgia were the Democrats and Whigs. The Democrats took control when the war ended but were soon ousted by the Republicans. A Republican governor served from 1868 until the end of 1871 when the Democrats regained control to remain the dominant party at all times since then. The most serious competition to the Democrats was the Populist movement in the 1890's. This party elected five senators and forty-seven representatives to the General Assembly in 1894 and polled 44½ percent of the total vote cast. Coulter, *Georgia, A Short History* (1961), pp. 362-380, 392-396. See also Arnett, *Populist Movement in Georgia* (1922).

Dr. Saye, *supra*, pp. 356-358, succinctly sets out the history of party nominating methods in Georgia and the events leading up to the Neill Primary Act:

"In the election of 1918, Governor Dorsey was unopposed for reelection.

"The first session of the General Assembly during Dorsey's administration passed the Neill Primary Act, destined to be of far-reaching significance in the future political history of the State. Beginning with California in 1866, several states introduced legal regulations of primary elections soon after the Civil War, but in Georgia primaries continued to be managed by political parties with little legal restraint.

An act of 1887 prohibited the giving or furnishing of liquor within a certain distance of polling places on election days and gave legal recognition to the existence of primaries, and an act of 1891 prescribed several regulations, but left their use optional with the political parties. Several laws on the subject were enacted during the first decade of the twentieth century, including an act of 1904 making it a misdemeanor to buy votes and an act of 1908 requiring that primaries for the nomination of State officers be held on the same date in all counties. Yet primary elections continued to be governed largely by party custom and rules.

"Prior to 1886 diverse methods had been used to select delegates to State conventions of political parties—mass meetings in county courthouses, meetings in militia districts to select delegates to county meetings, or appointment by county executive committees. Relatively few delegates had been chosen by actual vote of the people. In that year Henry Grady, managing Gordon's campaign for Governor, effectively offset the advantage that Augustus O. Bacon held in the party organization by an appeal to the people to revolt against the politicians and elect their own delegates to the Democratic State Convention. In 1890 the State Democratic Executive Committee recommended the use of primaries in selecting delegates to the State Convention, and eight years later the Democratic Party required this procedure. Delegates from each county to the State Convention of the Party were to be chosen by the county executive committees from the friends of the gubernatorial candidate receiving the largest popular vote in the county, and they were required to vote for State officers in the convention according to the vote of the people in their county.

"The county unit rule, under which the number of votes of a county in the State Convention was determined by its representation in the House of Representatives, was used from the very beginning of primaries by the Democratic Party, except in 1908, as noted above. . . ."

The movement to make statutory what had been voluntary was given additional impetus by the adoption of the Seventeenth Amendment to the Federal Constitution in 1913 requiring United States Senators to be elected by the people instead of by the state legislature as had been the practice. And with the adoption of the Primary Act, for the Democratic Party at least so long as it is used, the direct primary displaced the county mass meeting or caucus followed by the state convention as a method of choosing party candidates for the general election, and county units displaced county delegates.⁵

Based on the 1910 census, Fulton was the largest county when the Act was adopted in 1917 and the equality ratio for it under the Unit System, tied as it was to apportionment, had decreased from an advantage of 121 percent in 1868 over 100 to a disadvantage of 23.5 percent to 100.

After the primary is held, delegates are selected on the county unit basis from each county to attend the state convention where a platform is adopted, the votes can-

⁵ The main issue in the 1908 Democratic primary campaign was the effort of Hoke Smith to reform the "Undemocratic County Unit System whereby some country dwellers were given representation fifty times greater than that held by people living in large cities." The primary was held on a popular vote basis and Smith was defeated by Joseph M. Brown, who with Thomas E. Watson, supported the Unit System. Coulter, *supra*, p. 399.

⁶ For other histories of Georgia political convention methods and the County Unit System see Coulter, *supra*; Gosnell and Anderson, *supra*; and Rigdon, *Georgia's County Unit System, 1901-1901*, pp. 23-27; see also *Turnman v. Duckworth*, *infra*, and *South v. Peters*, *supra*.

vassed and the names of the candidates winning the primary are ratified and certified to the Secretary of State for entry in the general election.

Under the Unit System candidates for governor and United States senator are required to receive a majority of the votes cast to secure the respective nominations out of the total of 410 county unit votes (two for each member of the House of Representatives). In the event of a tie the candidate with the largest popular vote becomes the nominee. A second or run off primary is held if no candidate has the majority. A plurality is sufficient as to the other offices to which the County Unit System applies.

The County Unit System as embraced in the Neill Primary Act is statutory only and a concerted effort was made in 1950 and again in 1952 to amend the Constitution to include it. The amendment was defeated in the 1950 general election on a popular vote basis 164,377 to 134,290, but the amendment would have carried 230 to 183 on a county unit basis. There were 309,170 votes against it and 279,882 for it in 1952 but the county unit vote would have been 264 votes for and 146 against. Rigdon, supra, pp. 36, 39.

Previous Litigation Concerning the County Unit System.

The validity of the County Unit System was first challenged in the case of **Cook v. Fortson**, N. D. Ga., 1946, 68 F. Supp. 624, where an effort was made to have the county unit rule and the statutes permitting its use declared unconstitutional, and to enjoin its use in determining the democratic nominee for Congress for the Fifth District of Georgia. The winner received a majority of the county unit vote but another candidate received a majority of the popular vote. Injunctive relief was denied

on the basis of **Colegrove v. Green**, 1946, 328 U. S. 549, 66 S. Ct. 1498, 90 L. Ed 1432, leaving the inequality complained of for consideration by the State Legislature or by the Congress under Article I, § 4 of the Federal Constitution. The court doubted that the county unit rule could be said to be imposed on a congressional primary by the state at all so as to bring the Fourteenth Amendment into operation since the statute, § 34-3217, provides that it shall not be construed to require any definite unit of election of candidates for primary nomination for Congress. If imposed it is done by action of the Democratic Committee for the Congressional District and not by statute, and this was expressly stated in the state party rules. The court said that at any rate the State Democratic Executive Committee had in effect cancelled the primary by certifying both candidates to the Secretary of State for inclusion on the general election ballot where all Democrats would be free to vote their choice on a popular vote basis.

In **Turman v. Duckworth**, N. D. Ga., 1946, 68 F. Supp. 744, plaintiffs challenged the use of the County Unit System in the statewide gubernatorial primary. One candidate received a plurality of the popular vote but the winner received a majority of the unit votes. An interlocutory injunction was denied. The court noted that plaintiff had not moved to assert the invalidity of the unit system before the Executive Committee set the primary, and before it was too late to have another primary or even a convention nomination. The court stated that the power and duty of the court to act is plain where a criminal statute about a political matter is involved. In **Re Yarbrough**, 1884, 110 U. S. 651, 45 S. Ct. 152, 28 L. Ed. 274, and **United States v. Classic**, 1941, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368, or where there is involved a statutory right of action for damages, as in **Nixon v. Herndon**, 1927, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759; **Smith**

v. Allwright, 1944, 321 U. S. 649, 64 S. Ct. 757, 88 L. Ed. 987, and **King v. Chapman**, 5 Cir., 1946, 154 F. 2d 460, but denied relief on the basis of **Colegrove**, supra. The court then made an additional statement for use in considering the merits in the event of appeal, and held that it had not been shown that the State of Georgia had deprived plaintiffs of the equal protection of the laws, recognizing however the primary as state action within the meaning of the Fourteenth Amendment. **King v. Chapman**, supra. It was pointed out that neither the state nor federal government had ever sought or demanded that voters should have equal voting influence, referring to the electoral college under which there have been presidents who did not receive a majority of the popular votes, and to the fact that the great political parties in their state and national organizations have based representation in the nominating conventions on the legislative strength of the states or counties represented. The court recognized the inequality between the less populated counties and Fulton County in representation in the legislature, and by consequence in applying the county unit rule to a primary, but stated that the remedy was through changes in the law rather than by appeals to courts of equity. It is a fair statement to say that the *ratio decidendi* of this case, like **Cook** is that the decision of the court was controlled by the **Colegrove** case involving congressional reapportionment in Illinois.

Both the **Cook** case and the **Turman** case were dismissed on appeal to the Supreme Court, with the authority cited being a case on mootness. Justices Black and Murphy were of the opinion that probable jurisdiction should be noted, with Justice Rutledge being of the opinion that the question of jurisdiction should be postponed until a hearing on the merits. 329 U. S. 675, 1945, 67 S. Ct. 21, 91 L. Ed. 596 (October 28, 1946).

Another suit was instituted in 1950, this time prior to the primary, challenging the unit system and it was dismissed by the District Court. **South v. Peters**, 89 F. Supp. 672 (N. D. Ga., 1950), Judge Andrews dissenting. The Supreme Court affirmed per curiam, saying "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions," citing **MacDougall v. Green**, 1948, 335 U. S. 281, 69 S. Ct. 1, 93 L. Ed. 31; **Colegrove**, supra; **Wood v. Brown**, 1932, 287 U. S. 1, 53 S. Ct. 1, 77 L. Ed. 313; and **Johnson v. Stevenson**, 5 Cir., 1948, 170 F. 2d 108. **South v. Peters**, 1950, 339 U. S. 276, 70 S. Ct. 641, 94 L. Ed. 834. Justices Douglas and Black dissented from the dismissal on the grounds that the right to vote in a primary where the discrimination is based on race, creed or color was held in **Nixon v. Herndon**, supra, to be covered by the equal protection clause of the Fourteenth Amendment, and the right to vote under such circumstances is protected by the Fifteenth Amendment. **Smith v. Allwright**, supra, and **United States v. Classic**, supra. They thought the evidence regarding the County Unit System indicated equally invidious discrimination. The County Unit System would fall under the equal protection clause, and by reason of violating Article I, § 2 of the Constitution providing that members of the House of Representatives shall be chosen by the people (not here involved) and the Seventeenth Amendment providing that senators shall be elected by the people. They set out their view of what the rule should be and it turned out to be the forerunner of things to come, **Baker v. Carr**, Supreme Court, No. 6, October Term, 1961 (decided March 26, 1962). It was that "the only tenable premise under the Fourteenth, Fifteenth, and Seventeenth Amendments is that where nominations are made in primary elections, there shall be no inequality in voting power by reason of race, creed, color or other invidious discrimination."

In **Cox v. Peters**, supra, suit was brought for damages under 8 U. S. C. A., § 43 against Georgia election officials alleging that a voter in the 1950 gubernatorial primary had been denied full enjoyment of his right to vote by reason of the County Unit System. The Georgia Supreme Court affirmed a dismissal of the suit, saying that the right to vote in a gubernatorial primary was not derived from the United States Constitution, and that the Georgia constitutional and statutory provisions asserted were applicable only to elections and that the primary was not the equivalent of an election, but only a substitute for a party convention. The United States Supreme Court dismissed for want of a substantial federal question, Justices Black and Douglas dissenting. **Cox v. Peters**, 1952, 342 U. S. 936, 72 S. Ct. 557, 96 L. Ed. 697.

A fourth attempt failed in 1958 when plaintiff was unsuccessful in obtaining the appointment of a three-judge court to consider the question. **Hartsfield v. Sloan**, leave to file petition for writ of mandamus, denied, five to four, 357 U. S. 916 (1958).⁷

Jurisdiction, Justiciability, Standing and the Question Presented.

A calm in litigation ensued thereafter as to the County Unit System while so-called reapportionment litigation was taking place in other states and some at least was pending before the Supreme Court. **Baker v. Carr**, supra. The instant litigation was filed shortly after the announcement of the decision in that case, and on the same day. A three-judge court was duly constituted and the matter came on promptly for hearing on the application for interlocutory injunction.

⁷ What has been heretofore stated was prepared before the hearing and before the General Assembly amended the Neill Primary Act, as will be hereinafter discussed. This was done in order to expedite a decision in a matter of such public importance.

That case involved the apportionment of the Tennessee State Legislature. The court held that the District Court possessed jurisdiction of the subject matter, and that a justiciable cause of action was stated upon which the appellants, residents and voters of Tennessee claiming arbitrary and capricious state action offensive to the Fourteenth Amendment, had standing to maintain the suit. The rationale of that decision encompasses the cause of action here. We, accordingly, take jurisdiction and also hold that plaintiff has standing to maintain the suit and that the complaint sets out a justiciable issue.

In doing so, we, of course, resolve in favor of the plaintiff the question whether the Fourteenth Amendment protection extends to alleged deprivation of equal protection occurring in a Primary, as distinguished from a General election.

Much has been said in briefs and oral argument as to the place which the Primary in the State of Georgia has traditionally played in the election process. It is a fact known to all that the Democratic candidate has, without exception, at least during the present century, been the choice of the voters at the General election. On the other hand, it is pointed out that at least with respect to the office of Governor, a candidate has been nominated by the Republican party to participate in the General election in November of this year. Our conclusion that the protection of the Fourteenth Amendment extends to invidious discriminations if they exist in a party primary in Georgia in no way depends upon the degree to which the Democratic party primary is tantamount to the final election. It is based rather on prior decisions of the Court of Appeals for the Fifth Circuit where it has been held that the conduct of a Primary election in Georgia is such an essential part in the total election process, its conduct and management is so closely supervised by State law

and the effect to be given it is so clearly determined by statute that the action of the party in the conduct of its primary constitutes state action within the contemplation of the Fourteenth Amendment to the Constitution (*Chapman v. King*, 5 Cir., 154 F. 2d 460).⁸ Touching on this matter Judge Sibley's opinion said:

"We think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and puts its power behind the rules of the party. It adopts the primary as a part,

⁸ As pointed out in the opinion written by Judge Sibley for the Court in *Chapman v. King*, *supra*:

"... The State collaborates in these ways: It prohibits anyone to participate in any primary or convention of any political party who is not a qualified voter. Georgia Code, § 2-608, Constitution, Art. II [since repealed] Sec. I, Par. 8. The State furnishes its list of registered voters and these voters alone are declared entitled to vote in primaries as well as in general elections. Georgia Code, § 34-405. And the State registrars are required to be at the court house during the voting hours of the primary as fixed by law § 34-2001a, to make corrections in the list [since repealed] § 34-411 (Supplement). The State requires the party to select election managers, and requires each manager to take an oath that he will fairly and impartially and honestly conduct the election according to the provisions of law. § 34-3201. If a voter is challenged, they are required to administer to him an oath that he is duly qualified to vote 'according to the rules of the party, and according to the election laws of this State.' § 34-3202. All the laws in reference to the qualification of voters and their registration are applied to primaries, and 'No person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election.' § 34-3218. If the challenged voter swears falsely, the State will punish him. § 34-9025. No one but a sworn manager can have any part in receiving or counting the votes. § 34-3205. The managers must turn over tally sheets, lists of voters, ballots and other election papers to the Clerk of the Superior Court to be kept under seal until the next grand jury meets if no contest is filed. § 34-3207. The managers are indictable for violation of their duty. §§ 34-9022, 34-9023. Generally all penal laws touching elections are extended to primaries. § 34-9033, Supplement; and § 34-9007."

of the public election machinery." *Chapman v. King*, supra, p. 464.

See also *Smith v. Allwright*, 321 U. S. 649, and *United States v. Classic*, 313 U. S. 209.

The remaining questions presented are but two: Does the County Unit System as set out in the Neill Primary Act, amended, violate the right of plaintiff to equal protection of the laws under the Fourteenth Amendment or his right to vote for a United States senator under the Seventeenth Amendment. This latter right would reach the unit system only as to the primary election for the office of United States senator, while the former would reach it as to all statewide offices. A subsidiary question of prime, even overriding importance, is the test to be applied to determine violation, and the factors to be considered in making the test.

The Test to Be Applied.

It must be borne in mind that the hearing just held is a hearing for a temporary injunction. Such a hearing differs very largely from a final hearing in equity on the merits of a case in that a plaintiff may be entitled to immediate relief where time is of the essence of the controversy, even before the parties are able to fully develop their case on the merits or before the trial court is able adequately to consider and make the proper judicial determination of all of the legal questions that arise. This case is an excellent illustration of the need for distinguishing between temporary and permanent relief. We do not doubt that the Fourteenth Amendment applies; and we proceed on that basis. We think the Court by its opinion in **Baker v. Carr** has now adopted the following test stated by Mr. Justice Douglas in **South v. Peters**, supra:

"Where nominations are made in primary elections, there shall be no inequality in voting power by reason

of race, creed, color, or other invidious discrimination.”

Having applied the equal protection clause of the Fourteenth Amendment to the rights of plaintiff in this suit, and having set aside for the purpose of this hearing and decision the other points raised by all parties, we apply the test of invidious discrimination. We need not apply it of course to the “time honored” system but to the system which is new as of yesterday. And as a part of the application of the test we hold that a political party may use a county unit system in primary elections for the nomination of candidates in the general election if the system, as we shall point out, does not run afoul of constitutional inhibitions.

A test for invidiousness must be formulated. Unlike per se invidiousness, springing from discrimination based on race, creed or color, we must here deal with discrimination not so infected, but arising out of a state legislative classification diffusing party political strength. The diffusion is between counties of all sizes, sparsely to densely populated, apparently on a rural-urban basis, but weighted from top to bottom, county by county, in favor of the next smaller.

⁹ Webster's International Dictionary gives the following definition for “invidious”:

“1. Tending to excite odium, ill will, or envy; likely to give offense; esp., unjustly and irritatingly discriminating; as invidious distinctions.”

The same dictionary gives the following definition for “discrimination”:

“1. Act of discriminating, or state of being discriminated.”

Referring to the definition of “discriminate” in the same dictionary, we find the following definition:

“1. Having the difference marked, distinguished by certain tokens; distinct.”

We make the test on a consideration of all relevant factors, and these include rationality of state policy. See the concurring opinion of Mr. Justice Clark in **Baker v. Carr** where the dismissal of the appeal in **South v. Peters**, supra, was said to reflect the viewpoint of the Supreme Court "to refrain from intervening where there is some rational policy behind the State's system."

Another test is whether or not the system is arbitrary. The right of plaintiff in this connection depends upon the treatment accorded his unit. His unit, Fulton County, must be related to the state as a whole in measuring his right, and his right is the same as that of all other Democrats in his unit. The fact that Echols or some other small county receives more than its share is of no concern to Fulton County so long as it is accorded proper treatment. And the consideration of this factor includes the applicability of the diffusion principle—the right of a state to properly diffuse "political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for asserting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demand on the states." **MacDougall v. Green**, supra, at page 284. We have considered too the genesis of the System, whether or not it was for a fair purpose in the beginning—that it was is self-evident from the history heretofore set out.

Another important factor to be considered in making the test is whether or not the unit system has a historical basis in our political institutions, both federal and state. The primary in Georgia and elsewhere simply took the place of the convention. The county units took the place of county delegates. Counties were governmental units in Georgia before the Union and had their voice in the councils of government on the state level through representa-

tion, rationally apportioned, first on number of electors and later on population, but never in any exact proportion. And for many years governors were elected by these representatives. With the advent of popular elections of the governor and other state officials, conventions with delegate strength by party rule based on county apportionment in the House of Representatives became the medium of nomination. Delegates were elected, not by direct primary, but at county mass meetings. This was followed by the county primary for the election of delegates—still in the ratio of legislative apportionment, and later by statewide primaries but still by party rule. And this finally became the statutory mode—as in the statute under attack here.

The national conventions of the great political parties use the congressional apportionment formula to a large extent in arriving at delegate strength. This gives some of the smaller states an advantage over the larger states and other factors, for example—the extra delegate bonus for party loyalty in past elections—cause a variance from exact apportionment.

The electoral college is not in exact proportion to population or voting strength but gives an advantage to the smaller over the larger. Recognizing that the electoral college was set up as a compromise to enable the formation of the Union among the several sovereign states, it still could hardly be said that such a system used in a state among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious. See Wilmerding, *The Electoral College* (1958), for examples of inequities arising under that system. And at least one other state, Maryland, uses a County Unit System in primary elections. Rigdon, *supra*, pp. 70-73.

Another important consideration in making the test at least for the purpose of court intervention, is the presence

or absence of political remedy. This lack is implicit in **Baker v. Carr**. Here we are not dealing with legislative apportionment but with the management of the state Democratic Party. Plaintiff as a Democrat is complaining of treatment received by him at the hand of other Democrats through the medium of a state statute, sponsored by a governor from his party and enacted by a legislature consisting in the main of members of his party. A political remedy encompasses the give and take within the political arena, but we must consider it, and whether there is substantial likelihood under the existing system of plaintiff's obtaining such relief measures as may be needed to accord him his constitutional rights. We hold that there is not.

An additional factor of importance, and of which we are much aware, is the delicate relationship between the federal and state governments under the Constitution. It has long been the law that the violation in question must be clear before a federal court of equity will lend its power to the disruption of the state election processes.

The test is on the sum of all of these factors, and if the action—here the statute, complained of—offends what are thought to be fundamental political concepts, giving due regard to each factor and to the rights of plaintiff and all others in his suit as compared to the whole—the state, it must be stricken because of discrimination so excessive as to be invidious.

The Merits.

The system as it existed prior to yesterday was violative of the right of plaintiff to equal protection of the laws. The system as it exists today is an improvement, and is the result of an effort on the part of the responsible state officials and the General Assembly of Georgia within recent days to comport with sharp new legal precedents. But

even the new system misses the mark in two respects: first in failing to accord the unit of plaintiff a reasonable proportion of the whole, and second in failing to accord the units representing a majority of the population a reasonable proportion of the whole. We do not strike the county unit system as such. We do strike it in its present form.¹⁰

And while it may appear doctrinaire to some extent in the application of such broad constitutional rights as equal protection, **MacDougall**, *supra*, to state definite standards, we nevertheless, because, and only because, it is a question of much public moment, hold that a unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the whole vote for electors of the party in a recent presidential elec-

¹⁰ The following table will illustrate how under the recent statute the vote of each citizen counts for less and less as the population of the county of his residence increases: this table covering only the four largest and four smallest counties in comparison with Fulton, the largest:

| County Number | Name | Population | Number Unit Votes | Population per unit vote | Ratio to Fulton County |
|---------------|----------|------------|-------------------|--------------------------|------------------------|
| 1 | Fulton | 556,326 | 40 | 13,908 | |
| 2 | DeKalb | 256,782 | 20 | 12,839 | |
| 3 | Chatham | 188,299 | 16 | 11,760 | |
| 4 | Muscogee | 158,623 | 14 | 11,330 | |
| 156 | Webster | 3,247 | 2 | 1,623 | 8 to 1 |
| 157 | Glascok | 2,672 | 2 | 1,336 | 10 to 1 |
| 158 | Quitman | 2,432 | 2 | 1,216 | 11 to 1 |
| 159 | Echols | 1,876 | 2 | 938 | 14 to 1 |

There are 97 two-unit counties, totalling 194 unit votes, and 22 counties totalling 66 unit votes, altogether 260 unit votes, within 14 of a majority; but no county in the above has as much as 20,000 population. The remaining 40 counties range in population from 20,481 to 556,326, but they control altogether only 287 county unit votes. Combination of the units from the counties having the smallest population gives counties having population of one-third of the total in the state a clear majority of county units.

tion; provided no discrimination is deemed to be invidious under the system if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress, and provided it is adjusted to accord with changes in the basis at least once each ten years. This is a "judicially manageable standard" contemplated in **Baker v. Carr**, supra.

Due consideration has been given to delaying the entry of an injunction until the next regular session of the General Assembly in January but having recognized the constitutional right of plaintiff, we cannot fail to protect it, nor do we believe the state would want to deny it in the fall primary.

An interlocutory injunction will be entered enjoining and restraining defendants from giving application to the County Unit System by statute or party rule in any election where the allocation of units falls short of this standard.

This 28th day of April, 1962.

Elbert P. Tuttle,

Elbert P. Tuttle,

Circuit Judge.

Griffin B. Bell,

Griffin B. Bell,

Circuit Judge.

Frank A. Hooper,

Frank A. Hooper,

District Judge.

In the
UNITED STATES DISTRICT COURT
For the Northern District of Georgia.

Civil Action No. 7872.

James O'Hear Sanders,
Plaintiff,

v.

James H. Gray, as Chairman of the Georgia State Democratic Executive Committee;

George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee;

The Georgia State Democratic Executive Committee;

The Georgia State Democratic Party; and Ben W.

Fortson, Jr., as Secretary of State of the

State of Georgia,

Defendants.

Order.

The defendants, their agents, employees, successors and all persons in concert with them, are hereby enjoined until the further order of this Court from conducting any party primary election or giving effect to any party primary election so far as controls the counting of votes under a county unit system in compliance with the terms of the Neill Primary Act, as amended on April 27, 1962, by the General Assembly of the State of Georgia, or according to any county unit method of counting votes, whether by virtue of statute or party rule, where the allocation of units violates the standards of allocation set forth in the opinion of the Court entered this date, to-wit: A county unit system for use in a party primary is invidiously discrimi-

natory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the vote for electors of the party in the most recent presidential election; provided, no discrimination is deemed to be invidious under such system if the disparity against any county is not in excess of the disparity that exists as against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress of the United States, and, provided provision is made for allocations to be adjusted to accord with changes in the basis at least once each ten years.

This April 28, 1962.

Elbert P. Tuttle,
Elbert P. Tuttle,
United States Circuit Judge.

Griffin B. Bell,
Griffin B. Bell,
United States Circuit Judge.

Frank A. Hooper,
Frank A. Hooper,
United States District Judge.

APPENDIX B.

Georgia Statutes in Question.

Ga. Code Ann., § 34-3212. **County Unit Vote.** (a) Whenever any political party in this state shall hold a primary election for nomination of candidates for United States Senator, Governor, Lieutenant Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals, such party or its authorities shall cause all candidates for nominations for said offices to be voted for on one and the same day each year in which there is a regular general election, on such day as now or hereafter may be prescribed by law. Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis as more fully hereinafter set forth.

(b) County unit votes shall be allocated among the several counties of this State in accordance with the following bracket system.

| Population of County | Unit Votes |
|----------------------|------------|
| 0- 15,000..... | 2 |
| 15,001- 20,000 | 3 |
| 20,001- 30,000..... | 4 |
| 30,001- 45,000..... | 5 |
| 45,001- 60,000..... | 6 |
| 60,001- 90,000..... | 8 |
| 90,001-120,000..... | 10 |
| 120,001-150,000..... | 12 |
| 150,001-180,000..... | 14 |
| 180,001-210,000..... | 16 |
| 210,001-240,000..... | 18 |
| 240,001-270,000..... | 20 |
| 270,001-300,000..... | 22 |
| 300,001-330,000..... | 24 |
| 330,001-360,000..... | 26 |
| 360,001-390,000..... | 28 |
| 390,001-420,000..... | 30 |
| 420,001-450,000..... | 32 |
| 450,001-480,000..... | 34 |
| 480,001-510,000..... | 36 |
| 510,001-540,000..... | 38 |
| 540,001-570,000..... | 40 |
| 570,001-600,000..... | 42 |
| 600,001-630,000..... | 44 |
| 630,001-660,000..... | 46 |
| 660,001-690,000..... | 48 |
| 690,001-720,000..... | 50 |

and for each 30,000 population in excess of 720,000 said county shall be entitled to an additional (2) unit votes.

The county unit votes hereinbefore allocated shall be allocated according to the latest federal decennial census, or any future federal decennial census as officially published from time to time.

(c) If in any county any two or more candidates should tie for the highest number of popular votes received, the

county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published at least one time in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire State, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the above named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all the county unit votes throughout the State, that said candidates have received an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and provided, however (except as hereinabove provided in case of a tie

in unit votes) no political party holding a statewide primary for the nomination of candidates named in this Section, as amended, shall declare any candidates for any such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, and also a majority of all the popular votes cast in such primary. If no such candidate shall receive a majority of the county unit votes and also a majority of the popular votes cast in such primary, there shall be a second primary election for such office held in the manner provided in Section 34-3213, as amended, between the candidate receiving the greatest number of county unit votes and the candidate receiving the greatest number of popular votes, but if the candidate receiving the greatest number of county unit votes also received the greatest number of popular votes, then the run-off shall be held between the candidate receiving the greatest number of county unit votes and the candidate receiving the next greatest number of popular votes. The results of such run-off primary election shall be determined and given effect as provided in said Section 34-3213, as amended.

(d) It shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate is placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named; Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 184; 1950, pp. 79, 80; 1962, Ex. Sess., p. ...).

Ga. Code Ann., § 34-3213, **Second Primary Election.** In the event that a run-off primary is required as provided in Section 34-3212, as amended, such political party shall hold a second primary throughout the State on a day fixed by the State Executive Committee of the political party holding such primary, and such run-off primary shall be held between the candidates as provided in Code Section 34-3212, as amended. The vote in such run-off primary shall be consolidated and the result declared and certified within 10 days after said second primary election, and published at least one time in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hands and seals of said chairman or secretary, and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof; or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State Executive Committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held to be the duly nominated candidates of such party for the office named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all the county unit votes of all the counties, then said State convention or the permanent chairman thereof, or ~~the~~ Secretary thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the reg-

ular nominee of such party for that particular office: Provided, further that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 185; 1950, pp. 79, 82; 1962 Ex. Sess., pp.).

Ga. Code Ann., § 34-3214. **Convention, when held.** In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215. **Special primary elections to fill vacancies.** Special primary elections to fill vacancies in any of the offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes throughout the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary election: Provided, that if no convention of such party shall be called or held, to follow a special primary election, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts, 1917, p. 188).

Ga. Code Ann., § 34-3215.1. **Certificate of result of election.** Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election (Acts 1943, p. 347).

Ga. Code Ann., § 34-3217. **Limitations.** Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last-named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals (Acts 1917, p. 189).

Ga. Code Ann., § 34-3218. **Laws of force.** All the laws in reference to the qualification of voters and their registration shall apply to said elections; and no person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election (Acts 1917, p. 189).

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. ~~9000~~ 112

**JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee;
GEORGE D. STEWART, as Secretary of the Georgia State
Democratic Executive Committee;
THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,**

vs.

**JAMES O'HEAR SANDERS,
Appellee.**

**Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.**

MOTION TO AFFIRM.

**HERMAN HEYMAN,
MORRIS B. ABRAM,
ROBERT E. HICKS,
Attorneys for Appellee.**

**1504 Healey Building,
Atlanta 3, Georgia.**

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IN THE
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Appellants,**

vs.

**JAMES O'HEAR SANDERS,
Appellee.**

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

MOTION TO AFFIRM.

Appellee in the above-entitled case moves to affirm under Rule 16 (c) on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

QUESTIONS PRESENTED.

The questions presented by Appellee may be subsumed under those stated by Appellants. However, the statement herein will serve to refine the issues consistently with the record as the same is understood by Appellee.

Appellee assumes from Appellants' Statement of Jurisdiction that since **Baker v. Carr** they do not question the jurisdiction of the court nor the justiciability of the issues presented.

Appellee contends that these have been the only substantial questions presented in any county suit litigation. Subsidiary questions remaining since **Baker v. Carr**, such as the application of the Equal Protection Clause and the Seventeenth Amendment to the Georgia County Unit Statute pose issues for which conventional standards are well established.¹

¹ The panel court by invalidating the county unit statute under the Fourteenth Amendment avoided any necessity of ruling under the Seventeenth Amendment. As will be mentioned later, the application of the Seventeenth Amendment is a moot question if the primary, as is expected, is conducted by popular vote.

STATEMENT.

The panel court invalidated a county unit statute which succeeded the Act of 1917 attacked in the original complaint. Under this new county unit statute, a majority of the Georgia population of voting age (50.4%) had only 31.1% of the total units assigned to the whole state.² Under it, in a two-man race for statewide office, 15.4% of the State's population of voting age could elect any state house officer or a United States Senator; in a three-man race, 10.2% would suffice; in a five-man race, only 6.1% would be required. Combination of units from counties having the smallest population would give those with one-third of the total population of the State a clear majority of the county units.

Unit increment brackets under this new law were contrived so as to deprive no small county of any units accorded under the previous Act. Under the new Act, counties from 0-15,000 people received two units; then there was an increment of one unit for the next 4,999 persons; then an increment of one unit for 9,999 persons; then an increment of one unit for 14,999 persons; then an increment

² At footnote 10 on page 15 of the Appellants' Statement of Jurisdiction, they compare the discrimination of the 1962 Amendment to that under the 1917 law when enacted. The Appellants also compare disparities in the Electoral College with those in the new law. What appellants do not point out is the following: That the allocation of unit votes in 1917 to the population from the last previous census gave counties having then 50.5% of the state's population 44.8% of the unit votes (Attachment A of complainant's Exhibit 8). Moreover, Attachment E of complainant's Exhibit 12 shows a comparison of disparity ratio in the distribution of the U. S. Electoral College votes and the Georgia county units under the 1917 Act and the 1962 Amendment. That attachment demonstrates that in no state in the electoral college were voters accorded less than 86% of an equal vote and that while 62% of the state's population had an electoral allocation within 15% of parity, only 23.2% of the counties of Georgia under the 1962 amendment have a unit allocation within that percentage of parity.

of one unit for 14,999 persons; and thereafter increments came in brackets of two units for 29,999 persons. Under this new device, no counties above 60,000 population could receive any increment of unit votes for less than 30,000 increments of population.

Throughout the State, units were assigned in a "crazy-quilt" pattern creating grave and absolutely senseless disparities amongst counties in the same geographic areas. Here are but a few examples: In the Sixth Congressional District, Crawford County, adjoining Bibb, has a unit per each 2,900 people; Bibb one unit per 11,000 population. In the Eighth Congressional District, Echols County, adjoining Lowndes, has one unit per 900 persons; Lowndes, one unit per 8,000 people. In the Fifth Congressional District, Rockdale County, adjoining DeKalb, has one unit per 5,250 people; DeKalb one unit for each 12,850 people. In the Tenth Congressional District, Oconee County, adjoining Clark, has one unit per 2,100 people; Clark one unit per 7,500 persons.

At the top of the population scale, a population increase of 30,000 will entitle a county to two additional units; at the bottom of the scale, the same population receives four units. Moreover, at the top, a 29,000 population increase receives no increments; at the bottom, 29,000 population entitles a county to four units.

During the trial, counsel for the Appellants was asked by the court for the rationale of the brackets under the new Act. No explanation was forthcoming except the general observation that the Legislature had seen fit to pass the Act.³ (The record below contains no evidence

³ Judge Hooper, in an exchange with counsel for the Appellants, said, amongst other things: "... Now I'm asking you what was the purpose of making it all the way through less units per thousand as the counties got larger, rather than making it the same unit per

from the Appellants showing any rationality or equity in the new county unit arrangement). The Appellants' evidence consisted in its entirety of the cross-examination of the Appellee, Sanders, an exhibit showing the consolidated election returns of Georgia's 1960 general election by counties and a table showing the population of each of Georgia's counties. Thus, the Appellants' evidence contained not one word showing that there is any equity in the system. In fact, Appellants' entire case was predicated on legal arguments relating to justiciability and jurisdiction.

Fulton County voters under this new Act were accorded but .52% of an equal vote but Echols voters were given 7.69 times an equal vote. Through the state, the advantages and disparities fell, not in any geographic location, but haphazardly. Rural people in Fulton County (which ranks third in rural population amongst the 159 counties of the State) suffered the same discrimination as the urban people in Fulton. Bankers in Twiggs were advantaged in the same way as the tenant farmers living there. The basis, if any, of the classification was not geographic but by population, the more the people, the less the vote of each.

This voting contrivance was superimposed upon a state having a House of Representatives of which a majority can currently be elected by voters in counties containing 22.2% of the state's population and a majority of whose Senate was in 1960 elected by voters in 28 of the 159 counties comprising but 5.5% of the state's population.

The new Act provided that to win the "first primary", a candidate had to receive a majority of the unit votes

thousand? What was the purpose behind that?" Mr. Murphy, counsel for Appellants, replied: "Well, I don't know. The Legislature passed this bill. We have to take it, whether or not it's valid and understandable, by what it says."

and a majority of the popular votes. But if one candidate obtained a clear majority of the popular vote, he was required to run in a second primary with a candidate having a minority of the popular votes, if the latter had obtained a majority of the unit votes. This conclusive primary was to be conducted between the popular vote candidate and the unit vote candidate but with the results strictly determined by the unit vote rule. As explained by the Floor Leader of the House of Representatives, this feature of the Act would assure that no candidate could succeed to a statewide office who had not first obtained a majority of the unit vote.⁴

Though the Act invalidated was enacted during the trial of the case, this had been anticipated and Appellee had filed, before trial, Professor Gaylord's affidavits containing the mathematical and statistical material in this record relating to this **new statute**. Moreover, other affidavits had been prepared and filed in advance of the trial, including that of Professor Bonner, showing the history of the unit system and its relation to rural antagonism to urban centers and to negro disfranchisement;⁵ that of Mayor Emeritus Hartsfield, demonstrating

⁴ The Hartsfield affidavit shows that under the Unit Rule urban citizens have not offered for and have not generally been electable to statewide office. This state of affairs would not logically be changed by the additional contrivance of a second conclusive county unit primary. If for no other reason, the panel court's decision is not premature if it opens the opportunities for all citizens to aspire and qualify for office and for all to vote equally in *all* primaries. The Appellants seem to contend that a primary is afforded constitutional protection if an *inconclusive* phase of it is conducted so that popular will is not totally disregarded.

⁵ The County Unit System has a racial bite implicit from Professor Bonner's affidavit and from complainant's Exhibit 15 below showing white and negro registration by counties in 1958. The point is simply this: With some exceptions, negro registration is low where the unit system accords disproportionate voting power; negro registration is higher in population centers where both the white and negro vote counts less.

the depressing effect of the system on citizenship participation in urban centers and the baleful results of traditional statewide campaigns conducted with scorn and villification against urban populations; and the Hammer affidavit showing (inter alia) that where the median educational level in the state is the least, there is to be found the greatest county unit voting power and where that level is highest, the political power is the lowest.

When the court convened on April 27, it could not have failed to notice judicially the activities of the General Assembly convened by proclamation of the Governor on April 10, 1962. He called the session to "preserve, protect and defend the traditional democratic institutions **existing** in this state." (Emphasis ours.)

From April 16 to April 27, the General Assembly played out its role in public view. The Governor's call also provided for legislative reapportionment. This was totally abandoned. Original proposals for very limited "equal proportions" county unit allocation were dropped. The units of the smaller counties were sacrosanct. They were not subject to any revision downward.⁶

As Appellants contend, the opinion of the Court was pronounced on April 28. But as was twice announced by the Court in public, its opinion was not written under the circumstances implied in paragraph 5 of Appellants' Motion to Advance. At the commencement of the hearing on April 27, the Court announced that it had written seventeen pages of historical background to an eventual opinion which was to be considered and arrived at after

⁶ Though efforts to repeal or to revise the unit system proportionate to population have been to no avail, twice when the legislature by a two-thirds majority in each house submitted a constitutional amendment extending the unit system, these proposals were defeated by substantial statewide popular majorities in 1950 and 1952 (See complainant's Exhibit 9).

trial and argument. The Court made it clear that the history which had been written up was not conclusive towards any result of the case.⁷

⁷ Chief Judge Tuttle said of this history: "... In doing this, the three members of the Court unanimously feel that we have not included anything in this preliminary statement that is in any way—what's the word?" Judge Bell: "Have any effect on the case's ultimate decision."

ARGUMENT.

This Court clearly has jurisdiction of this cause; the questions presented are quite important. Why then does the Appellee ask that the case be disposed of on this Motion to Affirm?

There are two reasons:

1. There have never been any substantial questions in any county unit case except the issues of jurisdiction and justiciability (and until settled sixteen years ago, the constitutional protection afforded the Georgia Democratic Primary).

Since **Baker v. Carr** and **Scholle v. Hare**, a county unit case requires only the application of traditional standards established under the Equal Protection Clause and the clear language of the Seventeenth Amendment. In **Baker v. Carr**, this Court said:

“Judicial standards under the Equal Protection Clause are well-developed and familiar, and it has been open to Courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects **no** policy, but simply arbitrary and capricious action.”

Moreover, the Equal Protection Clause applied to a franchise case such as this does not involve those complications which may be present in a representation case. Except in a Swiss canton or a New England town meeting where every man represents himself, a citizen is **represented** by delegates chosen by himself and others. The citizens of the district represented all **share** the representation. They must; there is no other way.

Voting, however, is a personal right and normally exercised in a closed booth. One does not normally share

a voting right and no weighting is necessary nor is it usual. In representation cases, mathematical equality is not possible. In voting cases, it is not only possible but usual. Inasmuch as legislative representatives are necessarily shared by groups, classification by territory or population in this field is natural and necessary. This is not true, however, of legislation dealing with the individual right of franchise.⁸

The county unit system has been considered on its merits by two justices of this Court.⁹ Mr. Justice Douglas

⁸ Before the Panel Court, the Appellee argued that in a *voting* or franchise case, as contrasted with a *representation* case, no classification is permissible under the Equal Protection Clause, by which the vote of one qualified voter is diluted, distorted, and in many instances, reversed. Appellee does not abandon this position. However, he does not, at this stage, press this contention for this reason: While the Panel Court did not rule that a county unit voting tabulation was invidious discrimination per se, it applied a test to any such system which requires a degree of proportion to population or voters. Under this standard there is no substantial advantage to the use of the system by those who have profited from it in the past. In fact, a proportionate unit system deprives these groups of the right available under popular voting to join rural-minded city voters with others of like views in rural areas. Under a unit rule, the weight of such urban residents increase the unit votes which would be cast in a bloc as the pluralities in urban counties voted. Every indication since the order of April 28 leads to the conclusion that the vote tabulation on September 12 will be under a popular statewide majority rule. If this occurs, the issue of whether the county unit statute per se violates the Equal Protection Clause would be moot for this primary.

⁹ The Georgia County Unit Cases have produced four opinions on the "merits". One, quoted from in this motion is the dissent of Mr. Justice Douglas joined by Mr. Justice Black in *South v. Peters*, 339 U. S. 276. Below in that case, 89 F. Supp. 672, Judge Andrews had also written a dissent which found the statute unconstitutional. All other opinions on the "merits" referred to by Appellants were written by Judge Sibley, who, in each instance, held the Court without jurisdiction and the issue a political question. The only opinion on the Georgia county unit system by judges or justices who believed the issues presented to be justiciable, have ruled the statute invalid on the merits. It is interesting to note that in 1938 the Supreme Court of Tennessee which took jurisdiction of a case involving its county unit statute, ruled it unconstitutional. See *Gates v. Long*, 113 S. W. 2d 388.

joined by Mr. Justice Black, dissenting in **South v. Peters**, 339 U. S. 276, stated the following:

"Under both amendments [Fourteenth and Fifteenth] discriminations based on race, creed or color fall beyond the pale. Yet there is evidence in this case showing that Georgia's county unit system of consolidating votes in primary elections makes an equally invidious discrimination . . . The discrimination against citizens in the more populous counties of Georgia is plain. The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a Democratic system of government."

In this same opinion the two justices said:

"The county unit system has other constitutional infirmities. Article I, Section 2 of the Constitution provides that members of the House of Representatives shall be 'chosen' by the people and the Seventeenth Amendment provides that senators shall be 'elected' by the people. These constitutional rights extend to the primary where that election is an integral part of the procedure of choosing Representatives or Senators or where, in fact, primaries effectively control the choice"

And finally:

"Indeed, the only tenable premise under the Fourteenth, Fifteenth and Seventeenth Amendments is that where nominations are made in primary elections there shall be no inequality in voting power by reason of race, creed, or color, or other invidious discriminations."

Under the Seventeenth Amendment, the right to vote for U. S. Senator is derived from the United States Con-

stitution. The amendment not only requires that the Senators shall be "elected by the people" of the states but spells out who those people shall be:

"The electors in each state shall have the qualifications requisite for electors of the most numerous branch of state legislatures."

Said electors in Georgia are defined in the State Constitution at Article II; Paragraph 2, and there defined not as county units but as:

"Every citizen of this state who is a citizen of the United States, eighteen years or upwards, not laboring under any disabilities named in this article, and possessing the qualifications provided by it . . ."

Appellee contends that the state, having classified amongst its citizens those who are electors and entitled to vote in its elections, cannot thereafter discriminate within the class of persons it has established under the Fourteenth Amendment and cannot, under the Seventeenth Amendment, provide for the elections of senators by a contrived device by which the vote of the people is not only distorted and diluted, but frequently reversed.

2. Every consideration under the rubric of equitable discretion combines to urge the affirmance of the judgment below.

As the majority decision of this Court pointed out in **Baker v. Carr**, the doctrine of equitable discretion had played a decisive role in the result of **Colegrove v. Green**, 328 U. S. 549, and **MacDougall v. Green**, 335 U. S. 281, and perhaps in **South v. Peters**, 339 U. S. 276. In **Colegrove**, Mr. Justice Rutledge, whose vote was decisive, had stated:

"The shortness of time remaining (before the election) makes its doubtful whether action could, or

would, be taken in time to secure for petitioners the effective relief they seek."

In **MacDougall**, Mr. Justice Rutledge had stated:

"We are on the eve of the national election. But twelve days remain. . . . Issuance of the injunction sought would invalidate the ballots already prepared, including the absentee ballots, and those now in the course of preparation."

In the case at bar the injunction has issued. The Appellants sought and were denied on May 4 a stay of the order. At that hearing on the requested stay Appellee brought to the Court's attention the general acceptance of a popular vote primary by voters and candidates alike. It was pointed out to the Court that candidates had entered races—attracted since the Court's decision on April 28 to a primary with an equitable voting structure. Three Congressional District Democratic Committees which had previously conducted primaries under the unit rule have, since the decision of April 28, voluntarily abandoned it.

The appellants have not asked this Court for a stay of the injunction entered below nor for reversal of the order refusing the stay. The Georgia political process is thus moving smoothly and inexorably towards a primary to be conducted on an equitable basis on September 12, 1962. An affirmance by this Court of the panel court's judgment will insure the expected and smooth course of events. Any other disposition given of the case will create uncertainty and confusion where none exists.

This Court, in **Baker v. Carr** and **Scholle v. Hare**, has ordered the lower judiciary to apply traditional Equal Protection standards to cases which the courts had frequently ruled barred from a judicial determination.

This panel court, composed of one District and two Circuit Judges, has applied the test, and the result the Court

reached is consonant with the principles of justice and equity. The worst that can happen in Georgia as a result of affirmance of the panel court's decision is that every Georgian gets one vote on September 12, 1962. This has not created any grave disturbance anywhere else and it will not in Georgia.

Wherefore, Appellee prays that the judgment of the panel court be affirmed.

Respectfully submitted,

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APPENDIX.

The Court may judicially note as current history the following:

Congressman John W. Davis of the Seventh Georgia Congressional District summed up reaction to the change by his District Committee to the popular vote: "I didn't get a single bad letter about it."

Lieutenant Governor Garland Byrd, a candidate for Governor, called a popular vote "inevitable . . . according to the guidelines laid down by the Federal Court."

Senator Talmadge on qualifying for re-election, prior to the court's ruling of April 28, said that he was "perfectly willing" to run on either a popular vote or a unit vote basis.

Appellant Gray, the Democratic Party Chairman, while predicting the affirmance of the panel court's decision of April 28, stated that he thought a popular vote would "very definitely . . . be the logical way to handle" the primary.

Voting registration has soared in Fulton County since this case was filed and especially since the judgment was entered.

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IN THE
SUPREME COURT OF THE UNITED STATES.

OUTGOING TERM, 1962

No. 112

JAMES H. BEVEL, as Sheriff of the Georgia State
Penitentiary, Respondent, vs. et al.
Appellants.

JOHN STEWART BARNES,
Respondent.

Appeal from the United States District Court for the Southern
District of Georgia, Atlanta, Georgia.

WARRANTS OF HABEAS CORPUS FOR APPELLANTS.

CLERK OF COURT
U.S. Supreme Court
Washington, D.C.
1962

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 112.

JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee, et al.,
Appellants,

vs.

JAMES O'HEAR SANDERS,
Appellee.

Appeal from the United States District Court for the Northern
District of Georgia, Atlanta Division.

BRIEF ON BEHALF OF APPELLANTS.

I.

OPINION BELOW.

The decision of the three judge district court below, rendered on April 28, 1962 (R. 182), is reported as **Sanders v. Gray**, 203 F. Supp. 158 (D. C. Ga., 1962). A motion for stay by appellants (R. 209) was denied May 4, 1962 (R. 212). Probable jurisdiction was noted June 18, 1962. 369 U. S. 921, 8 L. Ed. 2d 502.

II.

JURISDICTION.

This being an appeal from an order (R. 204) granted by a special three-judge court convened pursuant to 28 U. S. C. A., Sections 2281, 2284, enjoining state officials from the enforcement of state statutes on the ground of their alleged repugnancy to the Constitution of the United States, the jurisdiction of this court on direct appeal is authorized by 28 U. S. C. A., Section 1253.

III.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

The Georgia statutes, the validity of which is drawn in question in this case, are Ga. Code Ann., Sections 34-3212 through 34-3218, inclusive, particularly Sections 34-3212 and 34-3213, as amended by an act approved April 27, 1962 (Ga. Laws, 1962 Ex. Sess., p. 1217). These statutes are set forth in "Appendix A".

IV.

QUESTIONS PRESENTED.

1. Whether a county unit method of conducting primary elections for nomination of candidates for Governor, United States Senator and other state house officers, in force by custom and practice for over 100 years, and by statute for 45 years, is violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether said statutes, as applied to primary elections conducted by political parties for nomination of

candidates for United States Senator, violate the Seventeenth Amendment to the Constitution of the United States, requiring that elections for Senator be "by the people".

3. Whether the constitutional adjudication here was premature in view of the fact that on the same day that the case was heard, an amendment to the statute under attack was enacted which required that in any event before a candidate could be declared the nominee of the party as a result of the first primary, he must not only receive a majority of county unit votes, but also a majority of all popular votes cast, failing whereof a run-off primary would be conducted between the candidates receiving the highest unit vote and popular vote, respectively.

4. Whether the court below erred in granting an interlocutory injunction against enforcement of the state statutes in question.

5. Whether the court below erred in refusing to dismiss the complaint on motion by defendants.

6. Whether a state, consistently with the Fourteenth and Seventeenth Amendments, and in view of the fact that final election is by popular vote, may insure an adequate diffusion of electoral power so as to achieve a reasonable balance between rural and urban areas, by, requiring that primary elections conducted by political parties be conducted and the votes cast therein be consolidated and tabulated according to the county unit method, whereby each county is assigned a prescribed number of unit votes, to be received by the candidate receiving a plurality of popular votes cast in each such county, the unit votes being allocated among the counties according to population pursuant to a bracket system graduated with each succeeding higher population bracket.

V.

STATEMENT OF THE CASE.

This case is an appeal by the Democratic Party of Georgia and its designated officials, and the Secretary of State of Georgia, from an injunction rendered by a special three-judge district court, declaring unconstitutional in part certain Georgia statutes governing conduct of primary elections, and enjoining said officials from enforcing and giving effect to said statutes¹ in the state-wide primary set by law² to be held on September 12, 1962, or any other primary, for nomination of candidates for Governor, United States Senator, and various state house offices. The General Election is to be held on the Tuesday after the first Monday in November, 1962.³

On March 26, 1962, the same date of this Court's decision in **Baker v. Carr**, 369 U. S. 186, plaintiff, appellee herein, filed complaint (R. 1) in the District Court for the Northern District of Georgia, alleging that he was a citizen and registered voter in Fulton County, Georgia, the state's most populous county; that he plans to vote in the Democratic primary on September 12, 1962; that defendant party and its officials are undertaking to conduct said primary in accordance with the "county unit" method as prescribed by statute; that defendant Fortson as Secretary of State will certify the names of the Democratic nominees so chosen to the several ordinaries for insertion on the general election ballot; and that said

¹ Ga. Code Ann., Sections 34-3212 through 34-3218, as amended, set forth in Appendix A.

² Ga. Laws 1962, p. 15.

³ Ga. Constitution, Art. III, Sec. IV, Par. II; Art. V, Sec. I, Par. II.

statutes are violative of plaintiff's rights under the Fourteenth and Seventeenth Amendments to the Constitution of the United States. Various allegations are made undertaking to demonstrate the manner in which it is alleged said statutes discriminate against voters in the more populous counties. Interlocutory and permanent injunction, declaratory judgment and convening of a special three-judge court were prayed (R. 12-14).

The complaint as brought attacked the validity of the County Unit Statutes as they existed up to April 27, 1962.

However, on Thursday, April 27, which was also the same day that the case was heard before the Court below, the General Assembly of Georgia enacted and the Governor approved, an amendment to the statutes under attack.⁴

Consequently, plaintiff's complaint and many of the exhibits attached thereto are no longer entirely pertinent to the issues in this case, as are some of the evidence and exhibits adduced at the hearing.⁵

Georgia law does not require that nominations by political parties be by primary. The statutes under attack do provide, however, that if a primary is held, the votes cast therein must be consolidated and tabulated according to the "County Unit" method, under which each county is assigned a certain number of unit votes.⁶ The candi-

⁴ Ga. Laws 1962 Ex. Sess., p. 1217.

⁵ This is true of the Hammer affidavit (R. 157), which was executed two days before the county unit statutes were amended. It is also true of one of the Gaylord affidavits (R. 170), which dealt with a so-called "equal proportions" proposal considered by the General Assembly during its special session, but which was not adopted. Also, inapplicable is the map of Georgia Counties (R. 177), showing unit vote distribution prior to the 1962 amendment. Some of the facts recited in the Court's opinion below also are no longer applicable, more particularly those statistics relating to unit vote distribution (R. 184).

date for any given office receiving a plurality of popular votes in any county is deemed to have carried such county, and is entitled to the full unit vote of such county. With respect to Governor and United States Senator, the candidate receiving a majority of the county unit votes over the entire state is entitled to receive the nomination. With respect to other state house offices, only a plurality was required.⁶ The unit votes allocated to each of the state's 159 counties were allocated on the basis of the representation accorded each county in the House of Representatives of the General Assembly, each county receiving 2 unit votes for each member of the House.⁷

Such was the state of the law when the complaint was filed. However, as previously noted, the law was amended by the General Assembly while the case was being argued. The effect of this amendment was to raise the total unit vote from 410 to 547, and to accord the larger counties substantially more unit strength. For example, Fulton County was raised from six to forty units. Under the 1962 amendment, unit votes were no longer tied to representation in the House of Representatives, but a bracket system was prescribed which gradually reduced the percentage of unit votes per given number of persons in each succeeding larger population bracket. A table showing

⁶ Ga. Code Ann. 1961, Cum. Pocket Part, Sec. 34-3213. The 1962 amendment now requires a majority as to all offices affected thereby, and not just Governor and Senator.

⁷ There are 205 members of the House of Representatives, thereby resulting in 410 unit votes prior to the 1962 amendment. These 205 representatives are apportioned by the Constitution as follows: To the eight most populous counties, three representatives each; to the thirty counties having the next largest counties, two representatives each, and to the remaining 121 counties, one representative each. Ga. Const., Art. III, Sec. III, Par. I. This apportionment is required to be changed every ten years within the limits of the above formula, Id., Par. II, and unlike the situation in *Baker v. Carr*, this course uniformly has been followed. See, E. G., Ga. Laws 1961, p. 111.

the unit vote distribution under the law as amended, together with a comparison with the distribution of 1910 is attached as "Appendix B".

Another very substantial change was made in the law. In order to be elected at the first primary, the law as amended required that a candidate receive not only a majority of unit votes, but also a majority of popular votes. If any candidate failed to so do, a second or run off primary was required to be held between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes.⁸ The candidate receiving the highest number of unit votes in the second primary prevails. Code Ann., Section 34-3212, 34-3213, as amended (Ga. Laws 1962, Ex. Sess. p. 1217).

The plaintiff filed amendment, attacking the validity of the law, as amended (R. 79). A special three judge court was convened, and the matter came on for hearing on April 27, 1962, defendants having filed answer (R. 45) and motion to dismiss (R. 62).

At the hearing the contentions of the plaintiff, as gleaned from his amended complaint and oral argument,⁹ emerged as follows:

1. The statutes deny equal protection because of "reversal" of the vote of a voter in any county casting his vote for a candidate who did not receive a plurality of popular votes in that county; (2) The

⁸ In the event one candidate received both the highest unit vote and the highest popular vote, the law specifies that he runs in the second primary against the candidate receiving the next highest popular vote.

⁹ The transcript of proceedings below was not designated to be sent up, due to the imminency of the September primary and the shortness of time. However, the parties stipulated that either side might refer to it on appeal (R. 208a). The transcript contains little of value, consisting mostly of argument.

statutes deny equal protection because of "dilution" of the votes in the more populous counties as compared to the smaller counties. In this respect, plaintiff contended alternatively that (a) any dilution was constitutionally impermissible, and (b) in any event, the disparity here was so great as to be "invidious"; (3) The statutes violate the Seventeenth Amendment requiring that senators be "elected by the people".

Also, while the hearing was in progress, the court was advised of passage and approval of the amendments to the statutes under attack, whereupon defendants orally moved for dismissal on the ground that the case was thereby rendered moot, and no controversy would be ripe for determination until a situation arose requiring a run-over. This motion was denied.¹⁰

The case was heard primarily on the affidavits and exhibits adduced by plaintiff, and the verified answer of defendants (R. 65). The only oral evidence adduced was testimony by plaintiff establishing his residence, citizenship and party affiliation.

On the following day, the Court rendered decision declaring the statutes unconstitutional in their present form, and granting injunction against their enforcement. The Court expressly held that a county unit system of primary nominations was not illegal *per se*. It did hold, however, that the allocation of unit votes as contained in the

¹⁰ See Note 9, *supra*. The motion was predicated upon so much of Section 34-3212 (c), as amended (Ga. Laws 1962 Ex. Sess., pp. 1217, 1220), as declares that that "... provided, however--no political party holding a statewide primary for the nomination of candidates named in this section, as amended, shall declare any candidate for such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, and also a majority of all the popular votes cast in such primary."

amended law effectuated invidious discrimination against plaintiff and those of his class (1) "In failing to accord the unit of plaintiff a reasonable proportion of the whole," and (2) "In failing to accord the units representing a majority of the population a reasonable proportion of the whole" (R. 202).

Motion for stay was denied below on May 4 (R. 212), and Notice of Appeal was filed May 2, 1962.

Subsequent to docketing of this case in this Court, several matters have transpired which should be related here.

First, on May 25, 1962, a three-judge district court sitting in the Atlanta Division, and composed of the two Circuit Judges who presided here, with another District Judge, held that the existing apportionment of the Georgia General Assembly was unconstitutional. **Toombs v. Fortson**, 205 F. Supp. 248 (D. C. Ga. 1962). By subsequent opinion rendered September 5, 1962, the same Court unanimously approved the minority report of the Reapportionment Study Committee.¹¹ This report recommended reapportionment of the State Senate so that each of the states' 54 senatorial districts would contain substantially the same number of persons. The House of Representatives remains as is under this plan.

Subsequently, the Governor called a second Extraordinary Session which convened on September 27, 1962, to consider the problem of reapportionment. This session culminated on October 5 with an act adopting without substantial change¹² the minority Report above referred

¹¹ Created in the first 1962 Special Session. As the resolution creating the committee was not a joint one, it was not published in the 1962 Laws.

¹² The only change made from the plan as approved by the Court involved the shifting of counties from one district to another, but the number of inhabitants per district was not materially altered.

to. The "rotation system" of selecting senators was abolished.

This development may have some bearing on the issues of this case, in view of plaintiff's contention below to the effect that the county unit method of nominating state-house executive and judicial officers was rendered more susceptible to constitutional attack because of the alleged mal-apportionment of the legislative branch of state government.¹³

Second, the State Democratic Executive Committee met on June 27, 1962, and by rule provided that the September primary should be held on a popular vote basis. In the event no candidate received a majority of the popular votes cast for any office, a run-off primary was required between the two candidates receiving the highest popular vote.

The Democratic Primary was held on September 12, 1962 on a popular vote basis. The successful candidate for Governor received a majority of both popular and county unit votes cast, as was the case in all other state-wide races, except the race for Lieutenant-Governor. In this race, Peter Zack Geer received a majority of county unit votes on the first ballot, but he did not receive a majority of the popular votes cast in the seven-man race, although he did receive a plurality. Subsequently, a run-off was held on September 26 between Mr. Geer and the candidate who received the next highest popular vote, and Mr. Geer received a majority of both popular and county unit votes in this run-off.

Therefore, so far as concerns the office of U. S. Senator and all other state-wide races, different results would not have occurred this year had the county unit system been in effect.

¹³ See affidavit of Gaylord (R. 129, 131).

The June 27th action of the Democratic Executive Committee and the results therefrom do not make this case moot, because the judgment below (R. p. 204) enjoined the defendant from conducting **any** party primary under the county unit method of counting votes, whether by virtue of statute or party rule, where the allocation of units violates the standards set forth by the Court's opinion. It also enjoins them from giving effect to any primary so held.

VI.

SUMMARY OF POSITION.

1. **The County Unit System Is Sustained by History.**

The history of this Country, and the Federal Constitution in particular, demonstrate that the founding fathers effected a compromise between the French and English schools of thought, and the resulting product was a republican form of government, more closely identified with English ideas than with the French theories of equality. In Georgia, the first governor was elected by two members from each county delegation to the state's unicameral legislature. When political parties first became prevalent, nomination was by convention, each county being entitled to a number of votes equal to, and later, twice, the number of representatives to which such county was entitled in the lower house. This same relationship was carried over into the realm of primary nominations, first by party practice, and in 1917, by statute. Thus it is seen that throughout Georgia's history, county unit determination has prevailed.

2. **The County Unit System Is Sustained by Law.**

The county unit act has been before the courts on four prior occasions, and has always been upheld. The decision of this Court in **South v. Peters** appears to be a ruling on the merits. The Act is likewise sustained by principles an-

nounced in **MacDougall v. Green**, and numerous cases distinguish this case from the typical legislative malapportionment situation represented by **Baker v. Carr**. The Court below upheld a unit system *per se*, and such a system has long been in vogue in the National Democratic Party Conventions.

3. **The County Unit System Is Not Invidiously Discriminatory.** The county unit system is far more proportionate to population now than in 1950 when it was upheld in **South v. Peters**, and is substantially the same from a standpoint of population as when adopted by statute in 1917. Equal protection relates to persons, not areas.

4. **The County Unit System Does Not Violate the Seventeenth Amendment.** The purpose of the amendment was not so much for a new system of choosing senators as it was against the evils of the old system, under which state legislatures were corrupted, and often dead-locked for many months.

5. **The Constitutional Adjudication Here Was Premature.** Under the 1962 Amendment, a candidate could not prevail at the first primary unless he received a majority of both unit and popular votes. Even had the Act been in effect and operative during the 1962 Democratic Primary, different results would not have occurred. The decision below was therefore premature.

6. **The Decree Below Was Too Broad.** The decree below not only declared the Act void, but undertook to state how it should be rewritten, and for this reason is too broad.

VII.

ARGUMENT.

1. The County Unit System Is Sustained by History.

Agreeing with the Court below that one test of rationality is "whether or not the unit system has a historical basis in our political institutions, both federal and state" (R. 200), and cognizant of the principle that "tradition and the habits of the community count for more than logic," **Laurel Hill Cemetery v. San Francisco**, 216 U. S. 358, 366, 54 L. Ed. 515 (1910), appellants at the outset expect to demonstrate the long standing historical basis for the county unit system. The matter will be considered both as a general proposition, and with particular reference to Georgia.

(a) In General.

The county unit system relates to the nomination of candidates for state-wide executive and judicial offices, and the United States Senate. As such, it is certainly not the election itself, but it is to some degree part of the process by which the voter participates in the democratic process of government at the executive and judicial levels, as well as at the legislative level as respects the office of United States Senator.

"Consequently, there is some similarity between the voter's status in electing such officers and his status in electing representatives in the legislative branch of government, and for this reason, a brief discussion of the latter seems relevant here.

The evolution of representative government in England has been well traced by Charles A. Beard and John D.

Lewis.¹⁴ Initially, of course, the King was law-maker, and parliaments were convened primarily for the voting of taxes. "The original parliament did not represent people—free and equal heads—as such, but the estates of the realm (the nobility, clergy, landed gentry, and burgesses of the towns); in a strict economic sense, two estates, i. e., land and commerce."¹⁵ In the second stage, the tax-voting body gradually became a law-making body, for as the lords and nobles met together in parliament, it was inevitable that they should discuss their grievances. These grievances would be set forth in a petition to the king, which if he signed, would become a law. Since the parliament had the purse strings, it could often force the king to consent. In time, the petition was dropped in favor of the bill.¹⁶

The third and fourth stages are described thusly:

"3. The third stage was reached by a gradual process culminating in the revolutions of the seventeenth century. At last, the king was substantially deprived of law-making and tax-voting powers, and his civil and military administration was confined within the limits laid down in constitutional measures. In other words, the estates summoned in the beginning to supply the royal treasury became conscious of their potential powers and transformed themselves into a sovereign body. Their crowning act was to compel the king to choose his chief officers of state, his cabinet or inner council, from the party that had a majority in Parliament. Although an elaborate ideology was developed in the course of this struggle,

¹⁴ "Representative Government in Evolution," 26 Am. Pol. Sci. Rev. 223 (1932).

¹⁵ Id., p. 231.

¹⁶ Id., pp. 232-5.

the operation itself involved a concern with very practical matters, largely economic in character, rather than a moral straining after a general ideal or the best of all possible worlds. When once the ruling classes represented in Parliament gained their ends, they settled down to the enjoyment of the spoils of office in the fashion meticulously described by L. B. Namier in **The Structure of Politics at the Accession of George III.**

4. The economic estates that made themselves sovereign through representative institutions had not long enjoyed the fruits of their labors when rumblings were heard below, among the nameless and unknown masses that had not shared in the process—serfs who, though rightless in the Middle Ages, had now become freeholders or agricultural laborers, craftsmen in towns, and other persons from whom the suffrage had been withheld. Indeed, these rumblings had been heard early—in the time of the Peasants' Revolt during the Middle Ages, and especially in the tempestuous age when Cromwell was upsetting the throne. But they were turned into a loud roar by the French Revolution, whose prophet, Rousseau, declared that all men were equal, and that each one was entitled to an equal share in governing. This, of course, was flatly contradictory to the system of English classes, but in time it prevailed—with the gradual extension of the suffrage until in our own time all adult men and women, as such, without regard to property are included within the political pale. And this extraordinary outcome, entirely unforeseen by the founders of representative institutions, was largely the result of a movement of economic, intellectual, and educational forces outside the sphere of legislation and administration."

In the United States, when the founding fathers came to draft the Constitution of the United States, they found themselves divided generally into two camps.

On the one hand, the political thought of Hamilton, Adams and their school of federalist sympathizers was English in complexion, and was dominated by an economic interpretation of history, inspired by the writings of Harrington, Locke and Adam Smith. As stated by Locke, "The great and chief end, therefore, of men uniting into commonwealths and putting themselves under government, is the preservation of their property."¹⁷ Therefore, since the great masses of people were without property, government must be so constituted as to protect those having property from those without it, and in this state of things, there could be no place for a pure democracy, with its ideas of equality.¹⁸

On the other side of the political fence was Thomas Jefferson, who received his inspiration from the French Revolution and its school of writers, Rousseau, and Paine. Jefferson favored an agrarian democracy.¹⁹ The major premise of Paine was that sovereignty inheres in the majority will: "That which a nation chooses to do it has a right to do."²⁰ Paine bitterly attacked Burke's conception of a government based on a perpetual **civil** contract, an idea borrowed from the law of property. To Paine, the proper basis was a revocable **social** contract, in which every age is free to act for itself.²¹ The notions of equality and majority will were inexorably united in this philosophy.

¹⁷ *Second Treatise on Civil Government*, Chap. IX.

¹⁸ Harrington, *Main Currents in American Thought*, Book III.

¹⁹ *Id.*, p. 347.

²⁰ *Id.*, p. 333.

²¹ *Id.*, p. 334-5.

Throughout the Convention, the clash of these two divergent factions dominated the proceedings, but the English school had the upper hand. The end result was the adoption of a republican form of government as a compromise between the constitutional monarchy of Hamilton and the democracy of Jefferson, but the final product was more English than French. As stated by Harrington:

"Not until French romanticism popularized the doctrine of social equalitarianism was there any serious questioning of the principle of the economic basis of politics. The fact of property rule was challenged in America no more than in England, and the laws of suffrage in the several states were founded on that principle. The new state therefore, took its shape from men who were political realists, deeply read in the republican literature of the seventeenth century, and inspired by the ideals of the rising English middle class. The opponents of the new state, on the other hand, were economic liberals who rejected English middle-class ideals, and inclined increasingly to the humanitarian theory of the French thinkers, though with an eye always upon American conditions. The struggle between these two schools of thought determined the final outcome of a long and acrimonious contest."

"During the period with which we are concerned, American thought, become militantly self-conscious, but still vague and inchoate touching any ultimate program, drew inspiration from both sources; but the deeper, controlling influence came finally to be English rather than French."

Beard and Lewis, *supra*, are in agreement, for they observe:

"The Fathers of the American Constitution believed in representative and republican government, but they

feared the populace as they feared original sin. One of their fundamental purposes in shaping the form of the federal government was to break the force of majority rule at its source in elections and in the operation of the government itself. In itself, therefore, representative government need not be republican or democratic. It may be monarchical, or aristocratic, or so designed as to prevent the kind of popular government which operates through simple majorities."²²

The United States Senate is itself evidence of this fact: Madison and Wilson at the outset insisted on founding both branches of the government on popular will of the people as a whole, but they lost on the matter of the Senate. Charles Warren, **The Making of the Constitution**, p. 196.

On June 11, 1787, the Philadelphia Convention voted 6 to 5 to elect the Senate on the same basis as the House, proportionate to population, but actually elected by the States (Id. at 24); however, the matter was debated at length on June 30, and when the Convention met on the following Monday, a tie vote resulted on Ellsworth's motion for equality of representation in the Senate (p. 261). A committee was appointed (p. 264) and finally, on July 16, 1787, its report was adopted, 5 states to 4, referred to as the "Great Compromise." Had not this compromise been effectuated, the Convention would have failed (p. 309), and even had the convention adopted proportional representation in the Senate, the Constitution would never have been ratified by the people (p. 310). On July 23, it was voted that each state should have two senators (p. 346).

Very recently, it has been asserted that the federal analogy has no true application to the problem of state

²² 26 Am Pol Sci Rev at 228.

representation,²³ an argument predicated on several premises, first that the federal arrangement was born of the necessity of establishing a federal government at all events, and constitutes an arrangement now deemed antiquated, and second, that states bear a different relationship to the federal government than do political subdivisions to a state. The answer to the first is that regardless of whether the existing system be deemed outdated, its adoption reflects a national purpose which the people have not seen fit to endeavor to change, assuming such to be possible.²⁴ With respect to the second, the so-called "sovereignty" argument, i. e., that a state is sovereign, whereas a political subdivision of a state is not, it is enough to say that, contrary to some opinions, the Senate was not designed for the purpose of representing the States in the national Congress, but as a check against the House of Representatives.²⁵

These arguments against the federal analogy were also recently answered in **Maryland Committee v. Tawes**, Md., 31 Law Week 2155 (1962), where the Court declared:

"The very purpose of having two houses was that each would be a check upon the other and prevent the passage of hasty and ill-conceived legislation. A different method of selection was essential to the bicameral plan. No more natural or logical basis could be suggested than that the viable and long established political subdivisions be accorded representation, as they had been in election of electors under the Constitution of 1776.

²³ McKay, Reapportionment and the Federal Analogy, National Municipal League, August, 1962.

²⁴ See Constitution, Art. V.

²⁵ Charles Warren, *supra* at 104.

"The bicameral concept is not one that had become obsolete with the passage of the years. It has been repeatedly recognized by Congress and the President, subsequent to the adoption of the Fourteenth Amendment, in approving the constitutions of the states seeking admission to the Union.

"The (urban voters) argue that the Federal Constitution furnishes neither analogy nor precedent for the composition of the Maryland Senate, on the ground that the states which adopted the Federal Constitution were sovereign bodies. The argument overlooks the fact that thirty-seven states were admitted to the Union after 1789, which were not and had never been sovereign bodies, with the possible exception of Texas.

"In any event, the consequence and effect upon voting rights are the same, whether the voter be voting for United States senator or state senator. We think it is hardly conceivable that a different principle would apply in one case than in the other.

"We are of course aware that the government of the United States, within its delegated powers, may possess rights not retained by the states. But where civil rights are concerned there is still truth in the ancient adage that what is sauce for the goose is sauce for the gander. When the Supreme Court held in **Brown v. Board of Education**, 347 U. S. 483, that the Equal Protection Clause prohibited the states from maintaining racially segregated schools, it also held in **Bolling v. Sharpe**, 347 U. S. 497, decided the same day, that the Federal Government was likewise barred by the Fifth Amendment. The relation between the two amendments seems sufficiently close to negative a conclusion that a provision like that for the Federal Senate, U. S. Const., Art. I, sec. 3, would be offensive to either."

However, one does not have to study the legislative history of the Constitution in order to discern that equality of representation did not rule the day. The Constitution itself by its clear language manifests such a proposition, a proposition never more eloquently stated than by Judge Sibley's *per curiam* opinion in a 1950 decision upholding the Georgia county unit system, **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), aff'd 339 U. S. 276, 94 L. Ed. 834 (1950), where it was said:

"In general, that Constitution is not committed to elections by the people over the whole affected territory in which every vote will have equal weight, but rather the voting is by smaller units of unequal population and unequal voting power for each vote. The voting unit is never the whole United States but always the vote is by States, or smaller subdivisions as Congressional Districts under Congressional and State Statutes. The Constitution begins, 'We the people of the United States' do ordain and establish this Constitution for the United States of America'; but the people thereof never voted on it. Amendments thereto, under Article V affect the whole country, but are not voted on by the country, but by State units. The President is the President of the whole country, but is not elected by the equal votes of the people but by electors in each State are pointed in such manner as the Legislature thereof may direct; some of the electors are in proportion to population roughly, but two are from each State regardless of population. The only federal elections by the people were originally for the Representatives, apportioned to each State with regard to its population; and now by the Seventeenth Amendment Senators in identical words are to be elected by the people of each State; two senators from each State though in population Rhode Island and Nevada differ

in population from New York, Pennsylvania and California as much as Fulton County does from Georgia's smaller counties. The voters for Senators and Representatives are those in each State qualified to vote for the members of the most numerous branch of the State Legislature, and Congress cannot change that. By Article I, Sec. 4 (1), 'The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof, but the Congress may at any time by law make or alter such regulations.'

The Congress under this power has fixed the manner of holding elections for Representatives, and ordained that they shall not be State-wide, but by Congressional Districts. See **Wood v. Broom**, 287 U. S. 1; and **Colgrove v. Green**, 328 U. S., at page 555. Congress has not fixed the manner of holding elections for Senators, so they remain under the power of the State Legislature unless and until Congress sees fit to regulate.

True it is that Article IV, Sect. 4, provides, 'The United States shall guarantee to every State in this Union a republican form of government,' but this does not mean pure democracy. The Supreme Court has consistently held from **Luther v. Borden**, 7 How. and 1, to **Pacific States Tel. Co. v. Oregon**, 223 U. S. 118, that it is for the Congress, the political department of the government, to define a republican form of government and to effectuate the guaranty, and not for the Courts. But we may fairly assume that the Constitution itself is a satisfactory form and that the Constitutions of the ratifying States were esteemed such, as well as those of States since admitted to the Union. We have just seen that the federal Constitution does not employ elections by the people over the entire affected territory at all. The Constitution

of Georgia of 1777, in effect when Georgia ratified the Union, and that adopted immediately afterwards, had no State wide elections with votes of equal weight, but organized the State and operated it wholly on the county unit basis, using two port towns as units also under that of 1777. The Constitution of 1868, approved by Congress in readmitting Georgia to the Union, organized the State by county units substantially as at present, though there were some State wide elections.

We therefore cannot say there is any general Constitutional principle forbidding or discouraging the use of territorial subdivisions in fixing the manner of conducting an election by the people.

Another significant indication of the "Undemocratic" nature of our system of Government lies in the example of this Court. During the formative years, John Adams espoused an undemocratic, unheard of notion called judicial review. At this point it should be recalled that the British Constitution and the American Constitution as later interpreted are very different, in that in England, Parliament is supreme.²⁶

²⁶ Of minor divergences between their work and the British Constitution I shall speak subsequently. But one profound difference must be noted here. The British Parliament had always been, was then, and remains now, a sovereign and constituent assembly. It can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the Folk Moot of our Teutonic forefathers. Both practically and legally, it is today the only and the sufficient depository of the authority of the nation, and is therefore within the sphere of law, irresponsible and omnipotent.

In the American system there exists no such body. Not merely Congress alone, but also Congress and the President combined

This idea of Adams has been well summarized:

"In its relation to current English constitutional practice it was at once revolutionary and reactionary. It implied a double attack upon parliamentary sovereignty, first in limiting its powers by a super-parliamentary constitution, and then in subjecting its acts to judicial review. The final result would be the transfer of sovereignty from the legislature to the judiciary. The idea had been toyed with by English lawyers, but never seriously considered; it was alien to the whole theory and history of parliamentary development. English landed gentlemen have never been minded to grant the veto power to the judiciary, but have persistently retained sovereignty in the legislature. Nevertheless in such early speculation is found the germ of our later practice, as it finally developed through the decisions of Chief Justice Marshall."²⁷

Another oracle, although of later vintage, frequently consulted on this subject, is John Stuart Mill, whose **On Representative Government** is much quoted by equal-representation advocates. It is true that Mill declares in one place that,

"... for there is not equal suffrage where every single individual does not count for as much as any other single individual in the community."²⁸

are subject to the Constitution, and cannot move a step outside the circle which the Constitution has drawn around them. If they do, they transgress the law and exceed their powers. Such acts as they may do in excess of their powers are void, and may be, indeed ought to be, treated as void by the meanest citizen. Bryce, *The American Commonwealth*, Vol. I, pp. 32-33.

²⁷ Harrington, *supra*, Book III, p. 310.

²⁸ *Supra*, p. 54 (People's Edition).

In like view, Mill urged a broadened electoral base,²⁹ but only those who pay taxes should elect those who levy them; educational requirements should be imposed, and those on relief should not be permitted to vote.³⁰ However, frequently overlooked is Mill's insistence that votes should be weighted according to competency.³¹

In **The Federalist**, No. 10, Madison declared:

"From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

"A republic, by which I mean a government in which the scheme of representation takes place, opens

²⁹ *Id.*, p. 67.

³⁰ *Id.*, pp. 68-69.

³¹ *Id.*, pp. 70-71. "It is not useful, but hurtful, that the Constitution of a country should declare ignorance to be entitled to as much political power as knowledge" (p. 73).

a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

"The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

"The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose."

In the light of the historical evolution of this Country, it is difficult to comprehend such statements as recently made by a majority of a conference called by the Twentieth Century Fund on June 15, 1962, who declared, "It was the agreed consensus of the conferees that in the light of democratic principles, of history and of contemporary political theory, the only legitimate basis of representation in a state's legislature is people. One man's vote must be worth the same as another's." **One Man—One Vote**, p. 3 (1962). The statement did not, however, go unchallenged, for Professor Alfred De Grazia, the foremost member of the conference, filed dissent, in which it was stated:

"The statement says: 'The central fact is that any basis of representation other than population gives one citizen's vote greater value than another's. There is no justification in our democratic heritage, in logic or in the practical requirements of government for choosing such a course.' To this I say that **every** basis of representation, including population, gives one citizen's vote greater value than another's. That is, every device of government works to give different weights to different ideas and people. Hence, any newly imposed procedure or established procedure takes from some interest and gives to another. Furthermore, it is **completely erroneous in fact and principle** to say there is no justification in our democratic heritage, in logic, or in practical requirements of government for choosing such a course. There are, on the contrary, practices and justification in all three regards, each in its own way as important or more important than the equal-population doctrine. Making way for the active participation of the people in elections and government is very important. At the same time, the **Federalist** papers, the U. S. Constitution and all the State Constitutions, and indeed the prevailing doctrines and practices through history and around the world, incorporate and defend principles such as the representation of communities *per se*, the representation of interests of functional groups such as business, unions and associations; the interests of minorities, and the interest of 'efficient' administration'.

"The statement shows little appreciation of the true problems of its own pretended beneficiaries, the mass of people and the cities. A few unproven allegations tying the evils of the cities to the apportionment of State legislatures are not enough. There are, besides, no suggestions for research of this subject.

which was one of the reasons for calling the Conference. More importantly, the statement does not envision what I should regard as a task precisely suited to the history and character of the Twentieth Century Fund, namely the study of a new system of representation for the new America. Lacking this larger and more significant vision, the statement becomes less useful and might be unfortunately construed as intended to fit the needs of a current political controversy.³²

(b) **The County Unit System in Georgia.**

The decision of the Court below (R. 185) contains a fair account of the history of the county unit system, as do the opinions in **Turman v. Duckworth**, 68 F. Supp. 744, 746 (D. C. Ga., 1946), app. dismissed, 329 U. S. 675, and in **South v. Peters**, 89 F. Supp. 672, 676 (D. C. Ga., 1950), affirmed, 339 U. S. 276. It will be seen that up until the adoption of the Act of 1962, representation in party nomination was tied to representation in the lower house, first in convention nomination, and later in the direct primary.

No careful study has been made of the organization of political parties in Georgia prior to the Civil War. It is known that in the early 1830's factions in the Board of Trustees of the University of Georgia served as executive committees of the Troup and Clark parties, and that nomi-

³² Professor De Grazia's views are more fully set out in an article, "General Theory of Apportionment," 17 Law and Cont. Prob. 256, 257 (1952), where he declares: "No system of apportionment and no system of suffrage, balloting is neutral. The process of apportionment, like the other stages in the process of representation, is a point of entry for preferred social values. The existing system of apportionment, whether legal, illegal, or extra-legal, institutionalizes the values of some group in a society." De Grazia enumerates the various bases of apportionment as territorial surveys, governmental boundaries, official bodies, functional divisions of the population, and free population alignments.

inations for Governor were customarily made at caucuses held in Athens on commencement day at the University. (Ulrich Bonnell Phillips, **Georgia and State Rights**, Washington, Macmillan Company, 1928, pp. 187-203-206.) By 1840 parties in Georgia had developed the practice of holding state conventions to nominate candidates for Governor, for Congress, and for the electoral college. (Horace Porter Edmond, Jr., **Democratic Party Organization in Georgia**, Unpublished M. A. Thesis, University of Georgia, 1948, p. 1.)

During most of the period before the Civil War, Georgia had a bi-party political organization. The party formed by James Jackson, William H. Crawford and Michael Troup, and allied nationally with Jefferson's Republican Party, dominated the political scene at the opening of the nineteenth century, but party organization was not strong in the period prior to the constitutional amendment of 1825 which provided for popular election of the Governor. By this time a rival party known by the name of its leader, John Clark, had arisen. The two parties were differentiated more on economic and social grounds than any other, the aristocrats tending to be in the Troup Party. Division of the Jeffersonian-Republican Party into two wings during the period of Andrew Jackson was paralleled in Georgia by the rise of a State Rights and a Union party, the former largely a continuation of the Troup Party and the latter made up principally of Clarkites. In national politics the States Rights Party allied itself with the Whigs and the Union Party with the Democrats.

The political strength of the two Georgia parties was about equal in the decade of the forties. After the adoption of the district system for the election of representatives to Congress in 1844, the eight districts of the state were at first evenly divided between the two parties. In 1848, the Whigs permanently lost one of their districts.

and in 1850 another, but the 7th and 8th districts, represented by Robert Toombs and Alexander H. Stephens, remained Whig until the final overthrow of that party. The Democrats elected most governors of the state during the period, but the Whig opposition was always vigorous, and frequently controlled the General Assembly. After the Kansas-Nebraska controversy of 1854, Toombs, Stephens, and most of the former Whigs went over to the Democratic Party. Factional differences prevented the state from uniting immediately into one party, but by 1860 most Georgians belonged to the Democratic Party (Albert B. Saye, **A Constitutional History of Georgia, 1732-1945**, Athens, The University of Georgia Press, 1948, pp. 196-219; and Richard Harrison Shryock, **Georgia and the Union in 1850**, Durham, Duke University Press, 1926, pp. 217-363, *passim*.)

The evidence available indicates that representation in State conventions of political parties in the period before the Civil War was by counties, each county being entitled to the same representation it had in the General Assembly. Thus, in the State Rights Party Convention held in Milledgeville in June, 1840, each county was invited to send as many delegates as it had members in the General Assembly. (See the following contemporary newspapers: **The Columbus Enquirer**, January 1, 1840; the **Augusta Tri-Weekly Chronicle and Sentinel**, May 28 and June 6, 1840; and the Macon **Georgia Messenger**, June 11, 1840.) The State Rights party used this same basis of representation in its convention held in Milledgeville in November, 1841 (The Milledgeville **Southern Recorder**, November 2 and 16, 1841). The Union (Democratic Republican) Party also based representation in its State convention on each county's representation in the General Assembly. (See the Augusta **Georgia Constitutionalist**, November 20 and 27 and December 11, 1841.)

In the period following the Civil War and Reconstruction, the Democratic Party became the dominant party in Georgia, and the available evidence indicates that this party used a county unit rule of representation in its state conventions. For example, in the convention of the Democratic Party in 1876, counties were entitled to two, four, or six votes, depending upon their representation in the House of Representatives, and a county's votes were cast as a block (**Atlanta Constitution**, August 1, 1876). The same was true of the Convention of 1880 (**Atlanta Constitution**, August 6, 1880).

Although the county unit rule continued to be the basis of voting strength in nominating candidates for office in the State convention of the Democratic Party, the introduction of the direct primary in the closing years of the nineteenth century greatly altered the actual political process of nomination. Prior to 1898 there was no uniform method of selecting delegates to state and district conventions, the matter being left to the discretion of county executive committees. Mass meetings of all interested Democrats and appointment by executive committees seem to have been the most general practices. As early as 1874 the Democratic Executive Committee of Fulton County provided for popular election of convention delegates, and in 1886, thanks to the influence of Henry Grady and the **Atlanta Constitution**, approximately half the counties held primaries in which the people voted upon the two leading candidates for governor before delegates to the state convention were selected. In 1892 the State Democratic Executive Committee recommended the use of primary elections to the county executive committees, and in 1898 the State Committee formulated rules, including a specified date for the primary that were mandatory. The primary thus became a statewide institution. Party conventions were thereby transformed into agencies for

ratifying nominations already made by popular vote, but still upon a county unit basis.

The notable exception to the nomination of Democratic candidates by county unit votes was the election of 1908. In that year the State Democratic Executive Committee provided that nomination should be by popular vote (**Atlanta Constitution** February 7, 1908). The convention of that year voted to restore the county unit system of nomination (**Atlanta Journal**, June 23, 1908). Thus the provision in 1917 by State law for the use of the county unit system of nomination by political parties in primary elections was firmly grounded in custom.

2. The County Unit System Is Sustained by Law.

As indicated in the foregoing history, Georgia's county unit system of party nominations has existed in practice for over a hundred years. It was enacted into law in 1917 (Ga. Laws 1917, p. 183).

It was 29 years later before it was to be challenged in the Courts. In **Cook v. Fortson**, 68 F. Supp. 624 (D. C. Ga. 1946), a resident of Fulton County, one of three counties comprising Georgia's Fifth Congressional District, brought suit attacking the system, and claiming that although Mrs. Mankin, the candidate supported by plaintiff, received a majority of all popular votes cast, the defendant party officials were undertaking to certify another candidate who had received less popular votes, but a larger unit vote. The county unit system in this case, unlike that with respect to U. S. Senator and state house officers, was imposed not by statute, but by party rule. The three-judge court denied relief, citing **Colegrove v. Green**, 328 U. S. 549, observing also that the party officials had in fact certified both candidates.

The same year, another case was brought arising out of the Democratic Primary for Governor. **Turman v. Duckworth**, 68 F. Supp. 744 (D. C. Ga. 1946). This was a case brought by residents of Fulton and DeKalb Counties, alleging that in the September primary, their votes were cast for Mr. Carmichael, who received a plurality, but not a majority, of the popular votes cast for Governor. It was alleged that Mr. Talmadge had received a majority of county unit votes, and would be certified as the party nominee unless enjoined. The plaintiffs further alleged that Fulton and DeKalb Counties were accorded unit votes far less than that accorded other counties in proportion to population. Pending hearing, the complaint was amended to allege that the party officials had already certified Mr. Talmadge, and it was prayed that the Secretary of State be enjoined from placing his name on the general election ballot. The Court traced the history of the system in Georgia, noting that "Not only in Georgia, but throughout the United States, the great political parties have regarded county representation in nominating their candidates" (p. 747). Relief was denied on the basis of **Colegrove v. Green**, *supra*, but the Court proceeded to a consideration of the merits for purposes of consideration on appeal, declaring:

"Nothing is better settled than that legislative classifications are not by it prohibited if there is a rational basis for them. The three most recent Georgia Constitutions have classified the counties into three classes, based on population and to be readjusted after each census. A federal court can hardly say that Fulton and DeKalb Counties ought by virtue of the Fourteenth Amendment to have a fourth class created to give their voters proportional power and influence in the Legislature, or that the smaller counties should be put into another class having no representative.

Our system of Government, State and Federal, has never sought or demanded that each voter should have equal voting influence, though that might seem an ideal of democracy. In our federal government under its Constitution each State has in the Senate two 'unit votes,' wholly regardless of population, in the making of all laws, and in confirming treaties and appointments to federal offices. These unit votes also appear in the electoral college in choosing a president, so that there have been presidents who did not receive a majority of the popular votes. The people of the District of Columbia have no vote in their government but are ruled by a Congress elected wholly by others. Touching nominations, all the great political parties in their State and national organizations have followed in their nominating conventions the legislative strength of the States or counties represented, thinking that not to be irrational. Why should it be considered not rational for the Georgia Legislature, in authorizing the substitution of a primary for a convention, to say the same rule should govern in either?" (Emphasis supplied.)

Both cases were consolidated on appeal, **Cook v. Fortson**, 329 U. S. 675, 91 L. Ed. 596 (1946), and ordered dismissed by this Court. Mr. Justice Murphy and Mr. Justice Black were of the opinion that probable jurisdiction should be noted. Mr. Justice Rutledge was of the opinion that the question of jurisdiction should be postponed until the cases were argued. In dismissing the appeals the *per curiam* order cited **United States v. Anchor Coal Company**, 279 U. S. 812, 73 L. Ed. 971 (1929), which stands for the proposition that where a case has become moot pending appeal, the appellate court should dispose of the litigation below by directing dismissal of the complaint. It is difficult to determine to what extent the question of mootness

controlled this Court's disposition of the two appeals, for the decision was rendered October 26, 1946, prior to the November general election, and as pointed out in Mr. Justice Rutledge's opinion, not all the relief prayed for had become moot, as appellants sought relief with respect to certification of the returns of the general election.

The county unit system was next attacked in **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), where residents of Fulton County brought suit prior to the primary, alleged that they were Democrats and planned to vote in the September primary for candidates for Governor, U. S. Senator, and other state house officers; that although Fulton County had 14.4 per cent of the State's population, it was accorded only 1.46 per cent of the total unit vote; and that this disparity deprived plaintiffs of equal protection, and also was violative of the Seventeenth Amendment, requiring that senators be elected "by the people."

Reviewing Georgia history, the Court observed that "The counties were thus the units of government" (p. 676). The Court accepted the proposition that the primary in Georgia was "state action" as held in **Chapman v. King**, 154 F. 2d 460 (C. A. 5th 1946), but remarked, "Democratic nomination is not however, the equivalent of election nor does it insure it, for much may happen before or in the final election; but the nomination is practically potent, and important to voters and candidates" (p. 677). The issue, it was said, "is not like one where a person is denied the right to vote, for here each person is permitted to vote and his vote is counted. The wrong, if any, is to their unit" (p. 678). The Court expressly rejected the Fourteenth and Seventeenth Amendment contentions on the merits, and concluded:

"But after all this is a State regulation of primaries, not final elections. It relates, not to the Deem

cratic Party alone, but all parties, strong or weak, usually victorious or otherwise. **A primary never elects, but only nominates.** The voters who turn out and vote for the nominee, determine his election. These nominees have traditionally been chosen by all parties in State Conventions organized and voting in county units. The Neill Act does not command primaries nor abolish conventions, but tells a party that if it chooses to have a primary it must ascertain its result by the old convention standard, and abide by it, the convention no longer having the final choice of nominees. This has been accepted as reasonable until Fulton County by its own growth and absorption of other counties has become unique and wishes unique treatment" (p. 681).

On Appeal, **South v. Peters**, 339 U. S. 276, 94 L. Ed. 834 (April 17, 1950), this Court affirmed *per curiam*, declaring that "Federal Courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." Justices Black and Douglas dissented.

The third case arose in state court in the form of a suit for damages by a voter who claimed that the unit system operated to reverse and dilute his vote in the gubernatorial primary. The Supreme Court of Georgia sustained a judgment of the trial court dismissing the case on demurrer, declaring that a party primary was not an "election" subject to protection under the Fourteenth Amendment and the Georgia constitutional provisions conferring upon certain persons the right to vote. **Cox v. Peters**, 208 Ga. 498, 67 S. E. 2d 579 (1951). On appeal this Court dismissed for want of a substantial federal question. **Cox v. Peters**, 342 U. S. 936, 96 L. Ed. 697 (1952).

The fourth case is **Hartsfield v. Bell**, 357 U. S. 916, 2 L. Ed. 2d 1363, decided June 16, 1958. In this case Atlanta Mayor, William B. Hartsfield, brought suit alleging that he intended voting in the 1958 Democratic Primary for Governor and other statehouse officers; that the county-unit method was to be employed therein, and that it violates equal protection and the Seventeenth Amendment. On April 1, 1958, Judge Sloan declined to convene a three-judge court as prayed, and later that month petition for mandamus was filed in this Court. On June 16 this Court denied leave to file the petition, the Chief Justice and Justices Black, Douglas and Brennan being of the opinion that a rule to show cause should issue.

Such was the state of the law just prior to this Court's decision in **Baker v. Carr**, 369 U. S. 186, 7 L. Ed. 2d 663, decided March 26, 1962, the same day upon which the instant case was filed. In the **Baker** case this Court held, first, that the Court was not without jurisdiction to entertain a complaint alleging a denial of equal protection in a state's legislative apportionment. It was stated that neither the **Colegrove** case nor any of the county-unit cases "had turned upon a want of jurisdiction (369 U. S. at 202-3). The Court next held that the appellants did not lack standing, as they possessed "such a personal stake in the outcome of the controversy as to assure that concrete adverse-ness which sharpens the presentation of the issues upon which the Court so largely depends for illumination of difficult constitutional questions" (Id. at 204).

The last of the three propositions decided in **Baker** concerned "justiciability." To begin with, it was said, the issues could not be denominated nonjusticiable because of any reliance upon the "political question" doctrine, as "the nonjusticiability of a political question is primarily a function of the separation of powers" (Id. at 210), which in-

volves generally the relationship of the Court to the other coordinate branches of the federal government, and not the Court's relationship to the States. Challenges to state and congressional legislation under the Guaranty Clause (Art. IV, Sec. 4) were uniformly held nonjusticiable for the reason that the clause "is not a repository of judicially manageable standards which a Court could utilize" (Id. at 223). Since the controversy here did not involve separation of powers in a challenge under the Guaranty Clause, but rather the validity of state action and the Fourteenth Amendment, it was said:

"Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects **no** policy, but simply arbitrary and capricious action.

"This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which, in fact, they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with these political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here."

The **Colegrove** and **South** cases were explained as having turned not on nonjusticiability, but on equity's discretionary power to withhold relief (Id. at 235).

Mr. Justice Douglas, specially concurring, apparently considered **Colegrove** and **South** to have been predicated upon non-justiciability (Id. at 249), and Mr. Justice Clark rationalized the county-unit cases—at least **South**—as being decisions on the merits, upholding the state law, for he declared:

“Finally, the Georgia county-unit-system cases, such as **South v. Peters**, 339 U. S. 276 (1950), reflect the viewpoint of **Mac Dougall**, i. e., to refrain from intervening where there is some rational policy believed the State's system” (Id. at 253).

In a footnote, he stated:

“Georgia based its election system on a consistent combination of political units and population, giving six unit votes to the eight most populous counties, four unit votes to the 30 counties next in population, and two unit votes to each of the remaining counties.”

It is submitted that this appraisal is correct. Certainly, **Mac Dougall v. Green**, 335 U. S. 281, 93 L. Ed. 3 (1948), was a decision on the merits. True, it involved political initiative, but as this like the exercise of the franchise itself affects a person's right to participate in the political processes of government, the distinction is one without a difference. In the **Mac Dougall** case, this Court held:

“It is allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality. This is not a unique policy.”

In **Remmey v. Smith**, 102 F. Supp. 708 (D. C. Pa. 1951),
dism., 342 U. S. 916 (1952), involving a similar situation,
where relief was also denied, a concurring judge de-
clared:

“What type of discrimination in state elections are
forbidden by federal law? Section 1 of the Fifteenth
Amendment and Section 31 of Title 8, U. S. C. A.,
prohibit discrimination on the ground of race, color
or previous condition of servitude. The Nineteenth
Amendment bans discrimination on account of sex.
To interpolate into these provisions the right that an
individual's vote in an election for state officers
should not be diluted by unequal apportionment but
should be equal in weight to each other vote cast in
the state would be legislative action by judicial pro-
nouncement.”

Dyer v. Karuhiza Abe, 138 F. Supp. 220 (D. C. Hawaii
1956), *dism.* 256 F. 2d 728 (C. A. 9th 1959), involved a
similar attack based upon failure of the territorial legis-
lature to reapportion as required by the Organic Act,
which required periodic reapportionment of both houses
according to population. In this case, however, the Court
granted relief, but in so doing, distinguished the South
case as follows:

“... *South v. Peters* concerned a state's desire
to regionally allocate votes in elections. Here again
no local law forbade such action.”

and

“We are not saying each citizen must always have
the same vote. Political institutions may invoke
geographic representation. However, where the funda-
mental law provides for equal rights of suffrage each
citizen should have the right of judicial redress if

the law is violated. Otherwise his rights under the law can be disregarded with impunity, as indeed they now are in Hawaii and many states.

Scholle v. Hare, 360 Mich. 1, 104 N. W. 2d 63 (1960), involving apportionment of the Michigan Senate, is inapposite. While the Michigan House was already apportioned according to population, the numerous opinions filed in the Michigan Supreme Court were all careful to point out that the Senate apportionment was completely arbitrary, being based neither on area, political units, or population. See 104 N. W. 2d at pages 67, 70, 71, 83, 91. This Court's remand "for further consideration in the light of *Baker v. Carr* . . .", 369 U. S. 429 (1962), is explainable on either of two grounds: (1) This Court may have felt that the problem of justiciability, not then resolved by **Baker** when the case was before the state court, may have befuddled the state court's consideration of the constitutional claim, and (2) the decision may be explained by the belief of a majority of this Court that while equal population is not the **only** basis, there must exist some rational basis, as for example, area, political units, functional divisions, tax receipts, or the like.

Recent cases have upheld the validity of a state senate apportionment based on political unit representation. **Maryland Committee v. Tawes**, 31 Law Week 2155; **W. M. C. A. v. Simon**, . . . F. Supp. . . ., 31 Law Week 2121 (D. C. N. Y., 1962); and cf. **Baker v. Carr**, 206 F. Supp. 341 (D. C. Tenn., 1962). **Levitt v. Maynard**, 31 Law Week 2060 (N. H., 1962), upheld apportionment based on tax receipts.

In what is undoubtedly recognized as a leading article on the subject, Lewis, "Legislative Apportionment and the Federal Courts," 71 Harv. L. R. 1057, 1077 (1958), the author declares:

"There is no constitutional assumption that representation in the state legislatures should be based on units of equal population. Indeed the states would seem constitutionally free to choose any reasonable form of representation they wish: by population, by area, or by occupations as in guild socialism."

Is there any more reason to assume a different rule as respects the franchise? Both deal with the voter's participation in the political process, one primarily with respect to the legislature, the other with respect to choosing executive and judicial officers.

United States v. Moseley, 238 U. S. 383, 59 L. Ed. 1355 (1915), frequently cited in support of the "reversal" attacks on the county-unit system, is also not on point. The "right to have one's vote counted" therein referred to was in connection with a criminal prosecution under 18 U. S. C. A. 241, involving fraudulent and criminal acts of election officials in omitting from their returns the votes cast by certain citizens. Similarly, the case of **United States v. Saylor**, 322 U. S. 385, 88 L. Ed. 1341 (1944), invoked in opposition to the "dilution" aspects of the unit system, involved another criminal prosecution against Kentucky election officials for stuffing the ballot boxes with fictitious ballots. No one would deny that the rationale of these cases would support a civil cause of action upon identical facts, but to undertake to apply them to the present context is stretching logic too far. The presence of a *mens rea* is determinative.

Appellee also relied below on **Gates v. Long**, 172 Tenn. 471, 113 S. W. 2d 388 (1938), condemning one species of a "county unit" plan of party primaries. At an extra session in 1937, the Tennessee legislature enacted legislation requiring compulsory primaries and requiring that

such primaries for Senator, Governor and other state offices be conducted on the county unit basis. Each county was assigned a number of unit votes equal to that number of votes which the county cast for the party nominee in the last general election for Governor, divided by 100, subject however, to the limitation that such vote could in no event exceed $\frac{1}{8}$ of 1% of the population of such county. Held: Federal decisions establish that the state can not discriminate among voters unless sustained by some rational basis, and this principle includes an abridgment effectuated by debasing the value of the votes of some of its citizens. **Here, the effect of the law is to penalize a county where more than $\frac{1}{8}$ of its population vote.** To discourage large participation at the polls cannot be regarded as an evil to be dealt with by the police power, and hence the limitation is void. For reasons of separability, it carries with it the requirement of voting by county units, as the statute declares that the unit system is made "subject to the limitation . . ." etc., and it cannot be presumed that the Legislature would have enacted one without the other.

However, a dissenting judge declared:

Neither the Constitution of Tennessee nor the Federal Constitution contains a requirement that the method of nominating candidates shall be by popular vote. Such provisions for nominating candidates are of comparatively recent date. 20 C. J. 111.

"Before the inauguration of the primary system candidates were not nominated by popular vote, but in conventions in which the delegates assembled and in which each county usually voted as a unit.

"The county unit plan for nominating candidates for public office is much older than the party primary

"To assume that political power is a function exclusively of numbers is to disregard the practicalities of government. Thus, the Constitution protects the interests of the smaller against the greater by giving in the Senate entirely unequal representation to populations. It would be strange indeed and doctrinaire, for this Court, applying such broad constitutional concepts as due process and equal protection of the laws to deny a State the power to assure a proper diffusion of political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportunities for exerting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demands on the States."

In the **Baker** case, it should be recalled, the Tennessee Constitution had adopted population as a basis for apportionment, but the legislature had consistently refused to follow it, with the result that Tennessee's apportionment by 1961 was inexplicable on any basis. As emphasized by Mr. Justice Clark (*Id.* at 254), there were unexplained disparities in representation between counties of substantially equal population, as well as between counties of widely-varying population.

Under the Georgia unit system, on the other hand, which heretofore was tied to legislative apportionment, the Legislature has never failed to reapportion in accordance with the Constitutionally-imposed standard.³³ See, for example, Ga. Laws 1961, p. 111, reapportioning the House of Representatives following the 1960 census.

Georgia, unlike Tennessee, has adopted and consistently followed a reasonable and recognizable basis—the relative

³³ Ga. Constitution, Art. III, Sec. III, Par. 1

standing, population-wise, of county units, so arranged as to achieve a "proper diffusion" of political power.

While originally, the county unit system was tied to legislative apportionment,³⁴ the revised version is not, but utilizes a bracket system.³⁵

This bracket system is reasonably uniform, however, and diminishes the unit vote gradually in proportion to county population with each succeeding higher population bracket.

Other recent cases demonstrate the distinguishing features of the Georgia system.

In **Radford v. Gary**, 145 F. Supp. 541 (D. C. Okl. 1956), aff'd 352 U. S. 991 (1957), denying relief from legislative malapportionment contrary to the state constitution, even the dissenting judge distinguished **South**, viz.:

"... **South v. Peters**, although recognizing the Federal Court's basic jurisdiction, merely reiterates the policy of refusing to exercise equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions. In the **South** case the complaint was against the manner in which the local law chose to distribute its electoral strength, admittedly a fundamental right retained by all states. Here, the controlling local law itself, in the form of a State constitutional provision is being ignored with the result that plaintiff is being denied 'equal protection of the laws.'"

³⁴ See Ga. Code, Sec. 34-3212, prior to its 1962 Amendment (R. 15-16).

³⁵ See "Appendix A."

system. For 150 years the President of the United States has been elected by the unit vote of the states and not by the popular vote of the electorate. Under the Twelfth Amendment to the Federal Constitution, ratified in 1804, when the election of President is thrown into the House of Representatives, each state has only one vote. So that New York with nearly three times the population of Tennessee, has no more weight or strength than the latter state.

“Prior to the ratification of the Seventeenth Amendment to the Federal Constitution in 1913, United States Senators were elected by the various State Legislatures and not by popular vote.

“In *Davidson County v. Kirkpatrick*, 150 Tenn. 546, 551, 266 S. W. 107, 109, it was said:

“The county existed as a unit of government when the state was organized under the Constitution of 1796, and is an integral part, an arm, of the state. *Hill v. Roberts*, 142 Tenn. 215, 222, 217 S. W. 826.”

.

“In the fourth place, it is insisted that the Unit Primary Bill violates the Fourteenth Amendment to the Federal Constitution which provides: ‘No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.’

“It is difficult to understand how this amendment could be said to condemn a plan approved and provided for in the original constitution.

"This amendment, however, does not provide that the vote of a state shall be determined by the popular majority."

This case is obviously distinguishable from Georgia in that (1) Tennessee law required a compulsory primary, Georgia law does not, but merely sets up rules to govern if one is held (2) the discrimination effected by the Tennessee law applied to all counties regardless of size, and on its face indicated that it was designed to penalize any county simply because of large participation by its citizens in prior election—clearly an unreasonable basis for differentiation.

The Court has yet to define the required standards of apportionment under the new judicial competency enunciated in **Baker v. Carr**, but whatever the final determination, the political arrangement here in issue is clearly supported by the **MacDougall** and **South** cases. This case was tried on affidavits and the verified answer of defendants was admitted in evidence. One part of that answer declares:

"Defendants also show that voters in the metropolitan and urban areas have opportunities for political organization and advancement not available to voters in areas of less population density; that Georgia is the largest state east of the Mississippi River, comprising myriad combinations of rural, urban and metropolitan areas, all embracing a wide cross-section of agricultural, commercial and industrial endeavors, and having people with widely-varying economic, social and political interests; that large, efficiently-organized and well-financed groups and organizations exist in the several large metropolitan areas possessed of the power, ability and demon-

strated inclination to effectively organize and regiment political action along group-interest lines; that such opportunities for concerted and collective action are not as readily available to areas of smaller population concentration; that powerful and influential newspaper and other communication media exist in the great metropolitan centers which daily exercise their forces so as to marshall public opinion along sectional and group interest lines; that less populous areas lack equivalent or comparable means of communication capable of mobilizing public opinion in accordance with local interests; and that the county unit method of nominating candidates in primary elections is reasonably designed to give recognition to the pattern of state organization on a county unit basis, and to achieve a reasonable balance as between urban and rural electoral power."

Since the Court below specifically upheld the unit system *per se* (R. 202), little need here be said concerning the reasonableness of a system whereby political subdivisions are permitted to speak as units. As pointed out in David, Goldman and Bain, **The Politics of National Party Conventions**, p. 199 (The Brookings Institution, 1960);

"In one form or another, the unit rule has been used to some extent in the Democratic party throughout its history. It was never adopted as a part of the national rules of the Republican Party, though it was an issue in that party for a time."

The authors trace the history of the rule in both parties, discussing the various arguments presented for and against it (Id., pp. 199-208), but appellants perceive that this Court is no more competent to resolve this dispute as a constitutional issue than it is to adjudicate the merits

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and demerits as between the Democratic and Republican parties themselves.

As previously seen, the county unit system of primary nominations is simply a substitute for the convention system.

3. The County-Unit System Is Not Invidiously Discriminatory.

"Appendix 'B'" to this Brief contains a comparison of the unit-vote distribution between the various counties in Georgia according to the 1910 and 1960 census figures. A quantity referred to as the "ratio of equality" indicates the amount by which a county's unit vote is weighted. This ratio is defined as the ratio of a given county's percentage of the total unit vote to that county's percentage of the total population. It ranges from a low of 52 per cent for Fulton, the most populous county to 740 per cent for Echols, the least populous county. Of course, the true index as held by the Court below is to compare Fulton's with the state as a whole, and not just against one small county (R. 199); and see **South v. Peters**, 89 F. Supp. at 676. So being, it follows that the vote of a voter in Fulton County is now equal to 52 per cent of the state average, whereas in 1910, it was only 23 per cent of the state average. Prior to the 1960 amendment, Fulton, with 14.11 per cent of the state population, had only 1.46 per cent of the unit vote—a ratio of equality of 10.4 per cent.

Considered differently, 18 counties having 52.28 per cent of the state's population now have 34.92 per cent of the state's unit vote.

Can this Court say that Fulton's ratio should be more than 52 per cent? If so, how much more? What is the

“judicially manageable” standard which applies? Would a factor of 85 per cent be rational? And what percentage of the total unit vote should the eighteen counties just referred to have?

In 1917, when the county unit method was enacted into law, the 8 largest counties had about 10.4 per cent of the unit vote, and 19.6 per cent of the population, giving a ratio of equality of .53. After the 1962 amendment, the 8 largest counties had 24.2 per cent of the unit vote and 41.3 per cent of the population, giving a ratio of equality of .585—an improvement over the act as originally enacted, as to the larger counties. Under the 1962 amendment, the average population per unit vote is 7210 persons. In Fulton County, the most populous county, the population per unit vote is 13,908, a disparity of 1 to 1.93. Under the electoral college, the disparity as between California and the average for the country as a whole in 1960 was 1 to 1.47. Under the formula laid down by the court below, the constitutionality of Georgia’s county unit system would vary from year to year, and what is today held void may be valid a few years hence assuming shifts in the electoral college.

Under the electoral college, a vote in Alaska is equal to 5.21 votes in California, and a vote in Nevada is equal to 4.13 votes in California. Theoretically, 43.2 per cent of the population residing in 39 states could cast a majority (269) of the total electoral vote (535).

Other comparisons are set forth in “Appendix C” to this brief.

If the County Unit System was valid in the form upheld in **South v. Peters**, with stronger reason it is valid now, when the population per unit vote in Fulton County has been reduced from about 92,000 to 13,000.

See also "Appendix D," for theoretical minimums under the electoral college system.

Added to this, the Court has repeatedly held that equal protection refers to persons, not geographical areas, and its requirements are satisfied if all persons within the given area are treated equally. **Salsburg v. Maryland**, 346 U. S. 545, 551, 98 L. Ed. 281 (1954); **McGowan v. Maryland**, 366 U. S. 420, 6 L. Ed. 2d 393 (1961).

4. The County Unit System Does Not Violate the Seventeenth Amendment.

While this contention was raised by the complaint (R. 11), it is apparent that the Court below did not rule on it. However, from a study of the legislative history of the Seventeenth Amendment, it is clear that the Amendment was not inspired by any desire for more democratic processes or equal suffrage, but simply because of dissatisfaction with the corruption of state legislatures and the frequent deadlocks which occurred under the original constitution, frequently resulting in a state being without senate representation. See 62nd Cong., 2nd Sess. 1911-1912, Senate Documents, Vol. 38, Doc. No. 666; 62nd Cong., 1st Sess., House Reports, Vol. I, Report No. 2 (April 12, 1911), 46 Cong. Rec. 1103. (Part, 61st Cong., 3rd Sess.); House Document No. 74, p. 60, 54th Cong., 2nd Sess. (1896-7); "Proposed Amendments to the Constitution," House Doc. 551, 70th Cong., 2nd Sess., p. 215.

Moreover, assuming plaintiff's contention to be correct as to the meaning of "by the people," it would produce the absurd result wherein candidates seeking nomination for U. S. Senator could not be nominated by the convention system in any state where the nominating process was considered an integral part of the election machinery.

United States v. Classic, 313 U. S. 299, 85 L. Ed. 1368 (1941).

Furthermore, "elected by the people," as used in the 17th Amendment, and "chosen . . . by the people" as used in Art. I, Sec. 2, have reference to the "final choice of an officer by the duly qualified electors." They do not refer to the nomination of party candidates, or to party primaries, which were unknown in 1787, and virtually unknown in 1912. **Hawke v. Smith**, 253 U. S. 221; **Newberry v. United States**, 256 U. S. 332. And see *American Historical Review*, Vol. 5, No. 2, p. 253. "The Rise and Fall of the Nominating Caucus, Legislative and Congressional: An Introduction to Political Parties and Practical Politics", by Prof. P. Orman Ray (Scribner, 1924), p. 109.

5. The Constitutional Adjudication Here Was Premature.

Under the County Unit Act, as amended (Appendix A), a candidate would not be entitled to nomination in the first primary unless he received not only a majority of county unit votes, but also a majority of popular votes. The run-off would be held between the candidate receiving the greatest county unit vote, and the candidate receiving the greatest popular vote. In the event the candidate receiving the greatest county unit vote also received the greatest popular vote, then the run-off would be conducted between the candidate receiving the greatest county unit vote, and the candidate receiving the next highest popular vote. As previously stated herein, there would have been no practical difference this year with respect to the races for U. S. Senator, Governor and other State House Officers, whether the County Unit System was in effect or not. Had the County Unit System been in effect, there would not have been a run-off for the office

of Lieutenant Governor, but in any event, the same result ultimately achieved in the run-off primary would have been accomplished under the County Unit Act, as amended, in the first primary. Consequently, appellants submit that the Court below, upon being advised of the passage of the 1962 Amendment containing the provisions hereinbefore referred to, should have dismissed the complaint under the rule that "determination of the scope and constitutionality of legislation in advance of its immediate adverse effect in the context of a concrete case involves too remote and abstract an inquiry for the proper exercise of the judicial function." **International Longshoremen's and Warehousemen's Union v. Boyd**, 347 U. S. 222, 224, 98 L. Ed. 650 (1954).

6. The Decree Below Was Too Broad.

The Decree rendered in this case not only declared the statute void, but undertook to define how it should be rewritten (R. 202 et seq.). This, it is submitted, was error. **Hague v. Committee for Industrial Organization et al.**, 307 U. S. 496, 518, 83 L. Ed. 1423 (1939).

VIII.

CONCLUSION.

There is no constitutional basis for asserting that voting equality must exist in a general election, much less in a party primary. If the Georgia County unit law, admittedly a substitute for a convention system, is held to be invalid, there is no logical reason why this Court should not thereby project itself into the political morass of party conventions, with all of their bitter factional disputes. Whatever one may think of the wisdom of the county unit

system, more vestiges of democratic processes inhere in it than in most convention nomination.

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APPENDIX A.

Georgia Statutes in Question.

Ga. Code Ann., § 34-3212. County Unit Vote. (a) Whenever any political party in this state shall hold a primary election for nomination of candidates for United States Senator, Governor, Lieutenant Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals, such party or its authorities shall cause all candidates for nominations for said offices to be voted for on one and the same day each year in which there is a regular general election, on such day as now or hereafter may be prescribed by law. Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis as more fully hereinafter set forth.

(b) County unit votes shall be allocated among the several counties of this State in accordance with the following bracket system.

| Population of County | Unit Votes |
|----------------------|------------|
| 0- 15,000..... | 2 |
| 15,001- 20,000..... | 3 |
| 20,001- 30,000..... | 4 |
| 30,001- 45,000..... | 5 |
| 45,001- 60,000..... | 6 |
| 60,001- 90,000..... | 8 |
| 90,001-120,000..... | 10 |
| 120,001-150,000..... | 12 |
| 150,001-180,000..... | 14 |
| 180,001-210,000..... | 16 |
| 210,001-240,000..... | 18 |
| 240,001-270,000..... | 20 |
| 270,001-300,000..... | 22 |
| 300,001-330,000..... | 24 |
| 330,001-360,000..... | 26 |
| 360,001-390,000..... | 28 |
| 390,001-420,000..... | 30 |
| 420,001-450,000..... | 32 |
| 450,001-480,000..... | 34 |
| 480,001-510,000..... | 36 |
| 510,001-540,000..... | 38 |
| 540,001-570,000..... | 40 |
| 570,001-600,000..... | 42 |
| 600,001-630,000..... | 44 |
| 630,001-660,000..... | 46 |
| 660,001-690,000..... | 48 |
| 690,001-720,000..... | 50 |

and for each 30,000 population in excess of 720,000 said county shall be entitled to an additional (2) unit votes.

The county unit votes hereinbefore allocated shall be allocated according to the latest federal decennial census, or any future federal decennial census as officially published from time to time.

(c) If in any county any two or more candidates should tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published at least one time in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire State, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the above named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all the county unit votes throughout the State, that said candidates have received

an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; ~~and~~ provided, however (except as hereinabove provided in case of a tie in unit votes) no political party holding a statewide primary for the nomination of candidates named in this Section, as amended, shall declare any candidates for any such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, and also a majority of all the popular votes cast in such primary. If no such candidate shall receive a majority of the county unit votes and also a majority of the popular votes cast in such primary, there shall be a second primary election for such office held in the manner provided in Section 34-3213, as amended, between the candidate receiving the greatest number of county unit votes and the candidate receiving the greatest number of popular votes, but if the candidate receiving the greatest number of county unit votes also received the greatest number of popular votes, then the run-off shall be held between the candidate receiving the greatest number of county unit votes and the candidate receiving the next greatest number of popular votes. The results of such run-off primary election shall be determined and given effect as provided in said Section 34-3213, as amended.

(d) It shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate is placed upon the tickets or ballots of such party at the general election following such pri-

mary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named; Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 184; 1950, pp. 79, 80; 1962, Ex. Sess., p. 1217).

Ga. Code Ann., § 34-3213, Second Primary Election.

In the event that a run-off primary is required as provided in Section 34-3212, as amended, such political party shall hold a second primary throughout the State on a day fixed by the State Executive Committee of the political party holding such primary, and such run-off primary shall be held between the candidates as provided in Code Section 34-3212, as amended. The vote in such run-off primary shall be consolidated and the results declared and certified within 10 days after said second primary election, and published at least one time in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hands and seals of said chairman or secretary, and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State Executive Committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates

shall be considered, deemed and held to be the duly nominated candidates of such party for the office named; Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all the county unit votes of all the counties, then said State convention or the permanent chairman thereof, or the Secretary thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office; Provided, further that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 185; 1956, pp. 79, 82; 1962, Ex. Sess., pp. 1217, 1221)

Ga. Code Ann., § 34-3214. Convention, when held. In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215. Special primary elections to fill vacancies. Special primary elections to fill vacancies in any of the offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes through-

out the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary election; Provided, that if no convention of such party shall be called or held, to follow a special primary election, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215.1 Certificate of result of election. Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election (Acts 1943, p. 247).

Ga. Code Ann., § 34-3217. Limitations. Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last named officials, except in their respective districts, circuits or counties, as provided by law; Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers,

Justices of the Supreme Court and Judges of the Court of Appeals (Acts 1917, p. 189).

Ga. Code Ann., § 34-3218. Laws of force. All the laws in reference to the qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election (Acts 1917, p. 189).

APPENDIX B

(1)

| Ratio of (% unit vote) Equality (% population) | % of Unit Votes | No. of Unit Votes | % of total Pop. | 1960 Rank | 1960 Population | County | 1910 Rank | 1910 Population | % of total Pop. | No. of Unit Votes | % of Unit Votes | Ratio of Equality |
|---|-----------------------|-------------------------|-----------------------|--------------|--------------------|-----------|--------------|--------------------|-----------------------|-------------------------|-----------------------|-------------------------|
| 1.00 | 100.00 | 547 | 100.00 | | 1,943,116 | State | | 2,609,121 | 100.00 | 384 | 100.00 | 1.00 |
| .52 | 7.31 | 40 | 14.11 | 1 | 556,326 | Fulton | 1 | 177,733 | 6.81 | 6 | 1.56 | .23 |
| .56 | 3.66 | 20 | 6.51 | 2 | 256,782 | DeKalb | 17 | 27,881 | 1.07 | 4 | 1.04 | .97 |
| .61 | 2.93 | 16 | 4.78 | 3 | 188,299 | Chatham | 2 | 79,690 | 3.05 | 6 | 1.56 | .51 |
| .64 | 2.56 | 14 | 4.02 | 4 | 158,623 | Muscogee | 6 | 36,227 | 1.39 | 6 | 1.56 | 1.12 |
| .61 | 2.19 | 12 | 3.58 | 5 | 141,249 | Bibb | 4 | 56,646 | 2.17 | 6 | 1.56 | .72 |
| .64 | 2.19 | 12 | 3.44 | 6 | 135,601 | Richmond | 3 | 58,886 | 2.26 | 6 | 1.56 | .69 |
| .63 | 1.83 | 10 | 2.90 | 7 | 114,174 | Cobb | 15 | 28,397 | 1.09 | 4 | 1.04 | .95 |
| .76 | 1.46 | 8 | 1.92 | 8 | 75,680 | Dougherty | 68 | 16,035 | .81 | 2 | .52 | .85 |
| .83 | 1.46 | 8 | 1.75 | 9 | 69,130 | Floyd | 5 | 36,736 | 1.41 | 6 | 1.56 | 1.11 |
| .87 | 1.10 | 6 | 1.26 | 10 | 49,739 | Hall | 22 | 25,730 | .99 | 4 | 1.04 | 1.05 |
| .88 | 1.10 | 6 | 1.25 | 11 | 49,270 | Lowndes | 26 | 24,436 | .94 | 4 | 1.04 | 1.11 |
| .92 | 1.10 | 6 | 1.20 | 12 | 47,189 | Troup | 20 | 26,228 | 1.01 | 4 | 1.04 | 1.03 |
| .93 | 1.10 | 6 | 1.18 | 13 | 46,365 | Clayton | 107 | 10,453 | .40 | 2 | .52 | 1.30 |
| .96 | 1.10 | 6 | 1.15 | 14 | 45,363 | Clarke | 31 | 23,273 | .89 | 4 | 1.04 | 1.17 |
| .96 | 1.10 | 6 | 1.15 | 15 | 45,264 | Walker | 53 | 18,692 | .72 | 2 | .52 | .72 |
| .83 | .91 | 5 | 1.10 | 16 | 43,541 | Gwinnett | 13 | 28,824 | 1.10 | 4 | 1.04 | .95 |
| .85 | .91 | 5 | 1.07 | 17 | 42,109 | Whitfield | 69 | 15,934 | .61 | 2 | .52 | .85 |
| .86 | .91 | 5 | 1.06 | 18 | 41,954 | Glynn | 71 | 15,720 | .60 | 2 | .52 | .87 |
| .92 | .91 | 5 | .99 | 19 | 39,154 | Houston | 29 | 23,609 | .90 | 4 | 1.04 | 1.16 |
| .99 | .91 | 5 | .92 | 20 | 36,451 | Carroll | 8 | 30,855 | 1.18 | 6 | 1.56 | 1.32 |
| 1.01 | .91 | 5 | .90 | 21 | 35,404 | Spalding | 46 | 19,741 | .76 | 2 | .52 | .68 |
| 1.05 | .91 | 5 | .87 | 22 | 34,319 | Thomas | 11 | 29,071 | 1.11 | 4 | 1.04 | .94 |
| 1.05 | .91 | 5 | .87 | 23 | 34,219 | Ware | 32 | 22,957 | .88 | 4 | 1.04 | 1.18 |
| 1.06 | .91 | 5 | .86 | 24 | 34,064 | Baldwin | 59 | 18,354 | .70 | 2 | .52 | .74 |
| 1.06 | .91 | 5 | .86 | 25 | 34,048 | Colquitt | 45 | 19,789 | .76 | 2 | .52 | .68 |
| 1.11 | .91 | 5 | .82 | 26 | 32,313 | Laurens | 7 | 35,501 | 1.36 | 6 | 1.56 | 1.15 |
| 1.00 | .73 | 4 | .73 | 27 | 28,895 | Coweta | 14 | 28,800 | 1.10 | 4 | 1.04 | .95 |
| 1.01 | .73 | 4 | .72 | 28 | 28,267 | Bartow | 21 | 25,398 | .97 | 4 | 1.04 | 1.07 |
| 1.03 | .73 | 4 | .71 | 29 | 28,015 | Polk | 41 | 20,203 | .77 | 2 | .52 | .68 |
| 1.14 | .73 | 4 | .64 | 30 | 25,203 | Decatur | 12 | 29,045 | 1.11 | 4 | 1.04 | .94 |
| 1.16 | .73 | 4 | .63 | 31 | 24,651 | Sumter | 10 | 29,032 | 1.12 | 4 | 1.04 | .93 |

APPENDIX B.

| | | | | | | | | | | | | |
|------|-----|---|------|----|--------|------------|-----|--------|------|---|------|------|
| .83 | .91 | 5 | 1.10 | 16 | 43,541 | Gwinnett | 13 | 29,224 | 1.10 | 4 | 1.04 | .95 |
| .85 | .91 | 5 | 1.07 | 17 | 42,109 | Whitfield | 69 | 15,934 | .61 | 2 | .52 | .85 |
| .86 | .91 | 5 | 1.06 | 18 | 41,954 | Glynn | 71 | 15,720 | .60 | 2 | .52 | .87 |
| .92 | .91 | 5 | .99 | 19 | 39,154 | Houston | 23 | 23,603 | .90 | 4 | 1.04 | 1.16 |
| .99 | .91 | 5 | .92 | 20 | 36,451 | Carroll | 8 | 30,855 | 1.18 | 6 | 1.56 | 1.32 |
| 1.01 | .91 | 5 | .90 | 21 | 35,404 | Spalding | 46 | 19,741 | .76 | 2 | .52 | .68 |
| 1.05 | .91 | 5 | .97 | 22 | 34,319 | Thomas | 11 | 29,071 | 1.11 | 4 | 1.04 | .94 |
| 1.05 | .91 | 5 | .97 | 23 | 34,219 | Ware | 32 | 22,957 | .88 | 4 | 1.04 | 1.18 |
| 1.06 | .91 | 5 | .86 | 24 | 34,064 | Baldwin | 59 | 18,354 | .70 | 2 | .52 | .74 |
| 1.06 | .91 | 5 | .86 | 25 | 34,048 | Colquitt | 45 | 19,789 | .76 | 2 | .52 | .68 |
| 1.11 | .91 | 5 | .82 | 26 | 32,313 | Laurens | 7 | 25,501 | 1.36 | 6 | 1.56 | 1.15 |
| 1.00 | .73 | 4 | .73 | 27 | 29,895 | Coweta | 14 | 29,800 | 1.10 | 4 | 1.04 | .95 |
| 1.01 | .73 | 4 | .72 | 28 | 28,267 | Bartow | 21 | 25,389 | .97 | 4 | 1.04 | 1.07 |
| 1.03 | .73 | 4 | .71 | 29 | 28,015 | Polk | 41 | 20,203 | .77 | 2 | .52 | .68 |
| 1.14 | .73 | 4 | .64 | 30 | 25,203 | Decatur | 12 | 29,045 | 1.11 | 4 | 1.04 | .94 |
| 1.16 | .73 | 4 | .63 | 31 | 24,652 | Sumter | 10 | 29,032 | 1.12 | 4 | 1.04 | .93 |
| 1.18 | .73 | 4 | .62 | 32 | 24,263 | Bulloch | 19 | 26,464 | 1.01 | 4 | 1.04 | 1.03 |
| 1.22 | .73 | 4 | .60 | 33 | 23,800 | Upson | 85 | 12,757 | .49 | 2 | .52 | 1.06 |
| 1.22 | .73 | 4 | .60 | 34 | 23,497 | Tift | 95 | 11,487 | .44 | 2 | .52 | 1.18 |
| 1.26 | .73 | 4 | .58 | 35 | 23,001 | Cherokee | 64 | 16,561 | .64 | 2 | .52 | .81 |
| 1.30 | .73 | 4 | .56 | 36 | 21,953 | Coffee | 37 | 21,953 | .84 | 4 | 1.04 | 1.24 |
| 1.35 | .73 | 4 | .54 | 37 | 21,101 | Catoosa | 129 | 7,194 | .28 | 2 | .52 | 1.86 |
| 1.38 | .73 | 4 | .53 | 38 | 20,999 | Newton | 58 | 19,449 | .71 | 2 | .52 | .73 |
| 1.40 | .73 | 4 | .52 | 39 | 20,536 | Burke | 18 | 27,269 | 1.05 | 4 | 1.04 | .99 |
| 1.40 | .73 | 4 | .52 | 40 | 20,481 | Walton | 23 | 25,393 | .97 | 4 | 1.04 | 1.07 |
| 1.08 | .55 | 3 | .51 | 41 | 19,954 | Chattooga | 76 | 13,608 | .52 | 2 | .52 | 1.00 |
| 1.10 | .55 | 3 | .50 | 42 | 19,756 | Meriwether | 24 | 25,190 | .97 | 4 | 1.04 | 1.07 |
| 1.10 | .55 | 3 | .50 | 43 | 19,652 | Mitchell | 35 | 22,114 | .85 | 4 | 1.04 | 1.22 |
| 1.12 | .55 | 3 | .49 | 44 | 19,228 | Gordon | 70 | 15,861 | .61 | 2 | .52 | .85 |
| 1.15 | .55 | 3 | .49 | 45 | 18,903 | Washington | 16 | 28,174 | 1.08 | 4 | 1.04 | .96 |
| 1.17 | .55 | 3 | .47 | 46 | 18,499 | Jackson | 9 | 30,169 | 1.16 | 4 | 1.04 | .90 |
| 1.17 | .55 | 3 | .47 | 47 | 18,391 | Stephens | 114 | 9,728 | .37 | 2 | .52 | 1.41 |
| 1.20 | .55 | 3 | .46 | 48 | 18,116 | Habersham | 109 | 10,134 | .39 | 2 | .52 | 1.33 |
| 1.20 | .55 | 3 | .46 | 49 | 18,015 | Grady | 57 | 18,457 | .71 | 2 | .52 | .73 |
| 1.22 | .55 | 3 | .45 | 50 | 17,921 | Wayne | 82 | 13,069 | .50 | 2 | .52 | 1.04 |
| 1.22 | .55 | 3 | .45 | 51 | 17,835 | Elbert | 27 | 24,125 | .92 | 4 | 1.04 | 1.13 |
| 1.22 | .55 | 3 | .45 | 52 | 17,815 | Emanuel | 25 | 25,140 | .96 | 4 | 1.04 | 1.08 |
| 1.22 | .55 | 3 | .45 | 53 | 17,768 | Crisp | 66 | 16,423 | .63 | 2 | .52 | .83 |

| Ratio of (% unit vote) Equality (% population) | % of Unit Votes | No. of Unit Votes | % of total Pop. | 1960 Rank | 1960 Population | County | 1910 Rank | 1910 Population | % of total Pop. | No. of Unit Votes | % of Unit Votes | Ratio of Equality |
|---|-----------------------|-------------------------|-----------------------|--------------|--------------------|---------------|--------------|--------------------|-----------------------|-------------------------|-----------------------|-------------------------|
| 1.22 | .55 | 3 | .45 | 54 | 17,619 | Henry | 44 | 19,927 | .76 | 2 | .52 | 0.68 |
| 1.25 | .55 | 3 | .44 | 55 | 17,468 | Jefferson | 38 | 21,379 | .82 | 4 | 1.04 | 1.27 |
| 1.28 | .55 | 3 | .43 | 56 | 16,837 | Toombs | 98 | 11,206 | .43 | 2 | .52 | 1.21 |
| 1.31 | .55 | 3 | .42 | 57 | 16,741 | Douglas | 119 | 8,953 | .34 | 2 | .52 | 1.53 |
| 1.31 | .55 | 3 | .42 | 58 | 16,682 | Worth | 51 | 19,147 | .73 | 2 | .52 | 0.71 |
| 1.31 | .55 | 3 | .42 | 59 | 16,483 | Dodge | 43 | 20,127 | .77 | 2 | .52 | 0.68 |
| 1.38 | .55 | 3 | .40 | 60 | 15,837 | Tattnall | 55 | 18,569 | .71 | 2 | .52 | 0.73 |
| 1.41 | .55 | 3 | .39 | 61 | 15,292 | Brooks | 28 | 23,832 | .91 | 4 | 1.04 | 1.14 |
| 1.41 | .55 | 3 | .39 | 62 | 15,229 | Hart | 67 | 16,216 | .62 | 2 | .52 | 0.84 |
| .97 | .37 | 2 | .38 | 63 | 14,919 | Scriven | 42 | 20,202 | .77 | 2 | .52 | 0.68 |
| 1.00 | .37 | 2 | .37 | 64 | 14,543 | Haralson | 77 | 13,514 | .52 | 2 | .52 | 1.00 |
| 1.00 | .37 | 2 | .37 | 65 | 14,487 | Liberty | 83 | 12,924 | .50 | 2 | .52 | 1.04 |
| 1.00 | .37 | 2 | .37 | 66 | 14,485 | Barrow | - | - | - | | | |
| 1.06 | .37 | 2 | .35 | 67 | 13,846 | Peach | - | - | - | | | |
| 1.06 | .37 | 2 | .35 | 68 | 13,633 | Ben Hill | 90 | 11,863 | .45 | 2 | .52 | 1.16 |
| 1.06 | .37 | 2 | .35 | 69 | 13,620 | Fannin | 86 | 12,574 | .48 | 2 | .52 | 1.08 |
| 1.09 | .37 | 2 | .34 | 70 | 13,423 | Columbia | 87 | 12,328 | .47 | 2 | .52 | 1.11 |
| 1.09 | .37 | 2 | .34 | 71 | 13,274 | Franklin | 61 | 17,894 | .69 | 2 | .52 | 0.75 |
| 1.09 | .37 | 2 | .34 | 72 | 13,246 | Appling | 88 | 12,318 | .47 | 2 | .52 | 1.11 |
| 1.12 | .37 | 2 | .33 | 73 | 13,170 | Macon | 72 | 15,016 | .58 | 2 | .52 | 0.90 |
| 1.12 | .37 | 2 | .33 | 74 | 13,151 | Early | 60 | 18,122 | .69 | 2 | .52 | 0.75 |
| 1.12 | .37 | 2 | .33 | 75 | 13,101 | Paulding | 73 | 14,124 | .54 | 2 | .52 | 0.96 |
| 1.12 | .37 | 2 | .33 | 76 | 13,011 | Chattahoochee | 135 | 5,586 | .21 | 2 | .52 | 2.48 |
| 1.16 | .37 | 2 | .32 | 77 | 12,742 | Terrell | 36 | 22,003 | .84 | 4 | 1.04 | 1.24 |
| 1.16 | .37 | 2 | .32 | 78 | 12,627 | McDuffie | 108 | 10,325 | .40 | 2 | .52 | 1.30 |
| 1.19 | .37 | 2 | .31 | 79 | 12,170 | Forsyth | 89 | 11,940 | .46 | 2 | .52 | 1.13 |
| 1.19 | .37 | 2 | .31 | 80 | 12,038 | Berrien | 34 | 22,772 | .87 | 4 | 1.04 | 1.20 |
| 1.23 | .37 | 2 | .30 | 81 | 11,822 | Cook | - | - | - | | | |
| 1.23 | .37 | 2 | .30 | 82 | 11,715 | Telfair | 80 | 13,288 | .51 | 2 | .52 | 1.02 |
| 1.28 | .37 | 2 | .29 | 83 | 11,474 | Dooly | 39 | 20,554 | .79 | 2 | .52 | 0.66 |
| 1.28 | .37 | 2 | .29 | 84 | 11,246 | Madison | 63 | 16,851 | .65 | 2 | .52 | 0.80 |
| 1.32 | .37 | 2 | .28 | 85 | 11,193 | Greene | 56 | 18,512 | .71 | 2 | .52 | 0.73 |
| 1.32 | .37 | 2 | .28 | 86 | 11,167 | Harris | 62 | 17,886 | .69 | 2 | .52 | 0.75 |
| 1.32 | .37 | 2 | .28 | 87 | 11,079 | Randolph | 52 | 18,841 | .72 | 2 | .52 | 0.72 |
| 1.32 | .37 | 2 | .28 | 88 | 10,961 | Wilkes | 30 | 23,441 | .90 | 4 | 1.04 | 1.16 |
| 1.37 | .37 | 2 | .27 | 89 | 10,572 | Rockdale | 120 | 8,916 | .34 | 2 | .52 | 1.53 |

| | | | | | | | | | | | | |
|------|-----|---|-----|-----|--------|---------------|-----|--------|-----|---|------|------|
| 1.06 | .37 | 2 | .35 | 69 | 13,620 | Fannin | 86 | 12,574 | .48 | 2 | .52 | 1.08 |
| 1.09 | .37 | 2 | .34 | 70 | 13,423 | Columbia | 87 | 12,328 | .47 | 2 | .52 | 1.11 |
| 1.09 | .37 | 2 | .34 | 71 | 13,274 | Franklin | 61 | 17,894 | .69 | 2 | .52 | 0.75 |
| 1.09 | .37 | 2 | .34 | 72 | 13,246 | Appling | 88 | 12,318 | .47 | 2 | .52 | 1.11 |
| 1.12 | .37 | 2 | .33 | 73 | 13,170 | Macon | 72 | 15,016 | .58 | 2 | .52 | 0.90 |
| 1.12 | .37 | 2 | .33 | 74 | 13,151 | Early | 60 | 18,122 | .69 | 2 | .52 | 0.75 |
| 1.12 | .37 | 2 | .33 | 75 | 13,101 | Paulding | 73 | 14,124 | .54 | 2 | .52 | 0.96 |
| 1.12 | .37 | 2 | .33 | 76 | 13,011 | Chattahoochee | 135 | 5,586 | .21 | 2 | .52 | 2.48 |
| 1.16 | .37 | 2 | .32 | 77 | 12,742 | Terrell | 36 | 22,003 | .84 | 4 | 1.04 | 1.24 |
| 1.16 | .37 | 2 | .32 | 78 | 12,627 | McDuffie | 108 | 10,325 | .40 | 2 | .52 | 1.30 |
| 1.19 | .37 | 2 | .31 | 79 | 12,170 | Forayth | 89 | 11,940 | .46 | 2 | .52 | 1.13 |
| 1.19 | .37 | 2 | .31 | 80 | 12,038 | Berrien | 34 | 22,772 | .87 | 4 | 1.04 | 1.20 |
| 1.23 | .37 | 2 | .30 | 81 | 11,822 | Cook | - | - | - | | | |
| 1.23 | .37 | 2 | .30 | 82 | 11,715 | Telfair | 80 | 13,288 | .51 | 2 | .52 | 1.02 |
| 1.28 | .37 | 2 | .29 | 83 | 11,474 | Dooly | 39 | 20,554 | .79 | 2 | .52 | 0.66 |
| 1.28 | .37 | 2 | .29 | 84 | 11,246 | Madison | 63 | 16,851 | .65 | 2 | .52 | 0.80 |
| 1.32 | .37 | 2 | .28 | 85 | 11,193 | Greene | 56 | 18,512 | .71 | 2 | .52 | 0.73 |
| 1.32 | .37 | 2 | .28 | 86 | 11,167 | Harris | 62 | 17,886 | .69 | 2 | .52 | 0.75 |
| 1.32 | .37 | 2 | .28 | 87 | 11,079 | Randolph | 52 | 18,841 | .72 | 2 | .52 | 0.72 |
| 1.32 | .37 | 2 | .28 | 88 | 10,961 | Wilkes | 30 | 23,441 | .90 | 4 | 1.04 | 1.16 |
| 1.37 | .37 | 2 | .27 | 89 | 10,572 | Rockdale | 120 | 8,916 | .34 | 2 | .52 | 1.53 |
| 1.37 | .37 | 2 | .27 | 90 | 10,495 | Monroe | 40 | 20,450 | .78 | 2 | .52 | 0.67 |
| 1.42 | .37 | 2 | .26 | 91 | 10,447 | Murray | 113 | 9,763 | .37 | 2 | .52 | 1.41 |
| 1.42 | .37 | 2 | .26 | 92 | 10,280 | Morgan | 47 | 19,717 | .76 | 2 | .52 | 0.68 |
| 1.42 | .37 | 2 | .26 | 93 | 10,240 | Lamar | - | - | - | | | |
| 1.42 | .37 | 2 | .26 | 94 | 10,144 | Effingham | 112 | 9,971 | .38 | 2 | .52 | 1.37 |
| 1.48 | .37 | 2 | .25 | 95 | 9,979 | Hancock | 50 | 19,189 | .74 | 2 | .52 | 0.70 |
| 1.48 | .37 | 2 | .25 | 96 | 9,975 | Camden | 127 | 7,690 | .29 | 2 | .52 | 1.79 |
| 1.48 | .37 | 2 | .25 | 97 | 9,678 | Pierce | 104 | 10,749 | .41 | 2 | .52 | 1.27 |
| 1.54 | .37 | 2 | .24 | 98 | 9,642 | Blackley | - | - | - | | | |
| 1.61 | .37 | 2 | .23 | 99 | 9,250 | Wilkinson | 110 | 10,078 | .39 | 2 | .52 | 1.33 |
| 1.61 | .37 | 2 | .23 | 100 | 9,211 | Irwin | 106 | 10,461 | .40 | 2 | .52 | 1.30 |
| 1.61 | .37 | 2 | .23 | 101 | 9,148 | Jenkins | 94 | 11,520 | .44 | 2 | .52 | 1.18 |
| 1.61 | .37 | 2 | .23 | 102 | 8,976 | Butts | 75 | 13,624 | .52 | 2 | .52 | 1.00 |
| 1.61 | .37 | 2 | .23 | 103 | 9,922 | Gilmer | 115 | 9,237 | .35 | 2 | .52 | 1.49 |
| 1.61 | .37 | 2 | .23 | 104 | 8,914 | Jeff Davis | 134 | 6,050 | .23 | 2 | .52 | 2.26 |
| 1.61 | .37 | 2 | .23 | 105 | 8,903 | Pickens | 117 | 9,041 | .35 | 2 | .52 | 1.49 |
| 1.68 | .37 | 2 | .22 | 106 | 8,666 | Dade | 144 | 4,139 | .16 | 2 | .52 | 3.25 |
| 1.76 | .37 | 2 | .21 | 107 | 8,468 | Jonas | 81 | 13,103 | .50 | 2 | .52 | 1.04 |

| Ratio of (% unit vote) Unit Equality (% population) Votes | % of Unit Votes | No. of Unit Votes | % of total Pop. | 1960 Rank | 1960 Population | County | 1910 Rank | 1910 Population | % of total Pop. | No. of Unit Votes | % of Unit Votes | Ratio of Equality |
|---|-----------------------|-------------------------|-----------------------|--------------|--------------------|------------|--------------|--------------------|-----------------------|-------------------------|-----------------------|-------------------------|
| 1.76 | .37 | 2 | .21 | 108 | 8,439 | Turner | 111 | 10,075 | .39 | 2 | .52 | 1.33 |
| 1.76 | .37 | 2 | .21 | 109 | 8,359 | Bacon | - | - | - | - | - | - |
| 1.76 | .37 | 2 | .21 | 110 | 8,311 | Taylor | 103 | 10,839 | .42 | 2 | .52 | 1.24 |
| 1.76 | .37 | 2 | .21 | 111 | 8,204 | Pulaski | 33 | 22,835 | .88 | 4 | 1.04 | 1.18 |
| 1.76 | .37 | 2 | .21 | 112 | 8,199 | Fayette | 101 | 10,966 | .42 | 2 | .52 | 1.24 |
| 1.85 | .37 | 2 | .20 | 113 | 8,048 | Johnson | 84 | 12,897 | .49 | 2 | .52 | 1.06 |
| 1.85 | .37 | 2 | .20 | 114 | 7,935 | Twiggs | 105 | 10,736 | .41 | 2 | .52 | 1.27 |
| 1.85 | .37 | 2 | .20 | 115 | 7,926 | Oglethorpe | 54 | 18,680 | .72 | 2 | .52 | .72 |
| 1.85 | .37 | 2 | .20 | 116 | 7,905 | Wilcox | 78 | 13,486 | .52 | 2 | .52 | 1.00 |
| 1.85 | .37 | 2 | .20 | 117 | 7,798 | Putnam | 74 | 13,876 | .53 | 2 | .52 | .98 |
| 1.95 | .37 | 2 | .19 | 118 | 7,456 | Rabun | 136 | 5,562 | .21 | 2 | .52 | 2.48 |
| 1.95 | .37 | 2 | .19 | 119 | 7,371 | Stewart | 79 | 13,437 | .52 | 2 | .52 | 1.00 |
| 1.95 | .37 | 2 | .19 | 120 | 7,360 | Warren | 91 | 11,860 | .45 | 2 | .52 | 1.16 |
| 1.95 | .37 | 2 | .19 | 121 | 7,341 | Calhoun | 96 | 11,334 | .43 | 2 | .52 | 1.21 |
| 2.06 | .37 | 2 | .18 | 122 | 7,241 | Lumpkin | 137 | 5,444 | .21 | 2 | .52 | 2.48 |
| 2.06 | .37 | 2 | .18 | 123 | 7,138 | Pike | 49 | 19,495 | .75 | 2 | .52 | .69 |
| 2.06 | .37 | 2 | .18 | 124 | 7,127 | Talbot | 92 | 11,696 | .45 | 2 | .52 | 1.16 |
| 2.06 | .37 | 2 | .18 | 125 | 6,952 | Evans | - | - | - | - | - | - |
| 2.06 | .37 | 2 | .18 | 126 | 6,935 | White | 139 | 5,110 | .20 | 2 | .52 | 2.60 |
| 2.06 | .37 | 2 | .18 | 127 | 6,908 | Miller | 125 | 7,986 | .31 | 2 | .52 | 1.68 |
| 2.18 | .37 | 2 | .17 | 128 | 6,802 | Seminole | - | - | - | - | - | - |
| 2.18 | .37 | 2 | .17 | 129 | 6,672 | Candler | - | - | - | - | - | - |
| 2.18 | .37 | 2 | .17 | 130 | 6,545 | Clinch | 123 | 8,424 | .32 | 2 | .52 | 1.63 |
| 2.18 | .37 | 2 | .17 | 131 | 6,510 | Union | 130 | 6,918 | .27 | 2 | .52 | 1.93 |
| 2.31 | .37 | 2 | .16 | 132 | 6,497 | Banks | 97 | 11,244 | .43 | 2 | .52 | 1.21 |
| 2.31 | .37 | 2 | .16 | 133 | 6,364 | McIntosh | 132 | 6,442 | .25 | 2 | .52 | 2.08 |
| 2.31 | .37 | 2 | .16 | 134 | 6,304 | Oconee | 100 | 11,104 | .43 | 2 | .52 | 1.21 |
| 2.31 | .37 | 2 | .16 | 135 | 6,284 | Montgomery | 48 | 19,638 | .75 | 2 | .52 | .69 |
| 2.31 | .37 | 2 | .16 | 136 | 6,226 | Bryan | 131 | 6,702 | .26 | 2 | .52 | 2.00 |
| 2.31 | .37 | 2 | .16 | 137 | 6,204 | Lee | 93 | 11,679 | .45 | 2 | .52 | 1.16 |
| 2.31 | .37 | 2 | .16 | 138 | 6,188 | Atkinson | - | - | - | - | - | - |
| 2.31 | .37 | 2 | .16 | 139 | 6,135 | Jasper | 65 | 16,552 | .63 | 2 | .52 | .83 |
| 2.47 | .37 | 2 | .15 | 140 | 5,906 | Lincoln | 122 | 8,714 | .33 | 2 | .52 | 1.58 |
| 2.47 | .37 | 2 | .15 | 141 | 5,891 | Brantley | - | - | - | - | - | - |
| 2.47 | .37 | 2 | .15 | 142 | 5,874 | Treutlen | - | - | - | - | - | - |

| | | | | | | | | | | | | |
|------|-----|---|-----|-----|-------|------------|-----|--------|-----|---|-----|------|
| 2.06 | .37 | 2 | .18 | 123 | 7,139 | Pike | 49 | 19,495 | .75 | 2 | .52 | .69 |
| 2.06 | .37 | 2 | .18 | 124 | 7,127 | Talbot | 92 | 11,696 | .45 | 2 | .52 | 1.16 |
| 2.06 | .37 | 2 | .18 | 125 | 6,952 | Evans | - | - | - | - | - | - |
| 2.06 | .37 | 2 | .18 | 126 | 6,935 | White | 139 | 5,110 | .20 | 2 | .52 | 2.60 |
| 2.06 | .37 | 2 | .18 | 127 | 6,908 | Miller | 125 | 7,986 | .31 | 2 | .52 | 1.68 |
| 2.18 | .37 | 2 | .17 | 128 | 6,802 | Seminole | - | - | - | - | - | - |
| 2.18 | .37 | 2 | .17 | 129 | 6,672 | Candler | - | - | - | - | - | - |
| 2.18 | .37 | 2 | .17 | 130 | 6,545 | Clinch | 123 | 8,424 | .32 | 2 | .52 | 1.63 |
| 2.18 | .37 | 2 | .17 | 131 | 6,510 | Union | 130 | 6,919 | .27 | 2 | .52 | 1.93 |
| 2.31 | .37 | 2 | .16 | 132 | 6,497 | Banks | 97 | 11,244 | .43 | 2 | .52 | 1.21 |
| 2.31 | .37 | 2 | .16 | 133 | 6,364 | McIntosh | 132 | 6,442 | .25 | 2 | .52 | 2.08 |
| 2.31 | .37 | 2 | .16 | 134 | 6,304 | Oconee | 100 | 11,104 | .43 | 2 | .52 | 1.21 |
| 2.31 | .37 | 2 | .16 | 135 | 6,284 | Montgomery | 48 | 19,638 | .75 | 2 | .52 | .69 |
| 2.31 | .37 | 2 | .16 | 136 | 6,226 | Bryan | 131 | 6,702 | .26 | 2 | .52 | 2.00 |
| 2.31 | .37 | 2 | .16 | 137 | 6,204 | Lee | 93 | 11,679 | .45 | 2 | .52 | 1.16 |
| 2.31 | .37 | 2 | .16 | 138 | 6,188 | Atkinson | - | - | - | - | - | - |
| 2.31 | .37 | 2 | .16 | 139 | 6,135 | Jasper | 60 | 16,552 | .63 | 2 | .52 | .83 |
| 2.47 | .37 | 2 | .15 | 140 | 5,906 | Lincoln | 122 | 8,714 | .33 | 2 | .52 | 1.58 |
| 2.47 | .37 | 2 | .15 | 141 | 5,891 | Brantley | - | - | - | - | - | - |
| 2.47 | .37 | 2 | .15 | 142 | 5,874 | Treutlen | - | - | - | - | - | - |
| 2.47 | .37 | 2 | .15 | 143 | 5,816 | Crawford | 124 | 8,310 | .32 | 2 | .52 | 1.63 |
| 2.64 | .37 | 2 | .14 | 144 | 5,477 | Marion | 116 | 9,147 | .35 | 2 | .52 | 1.40 |
| 2.64 | .37 | 2 | .14 | 145 | 5,342 | Wheeler | - | - | - | - | - | - |
| 2.64 | .37 | 2 | .14 | 146 | 5,333 | Heard | 99 | 11,189 | .43 | 2 | .52 | 1.21 |
| 2.85 | .37 | 2 | .13 | 147 | 5,313 | Charlton | 140 | 4,722 | .18 | 2 | .52 | 2.84 |
| 2.85 | .37 | 2 | .13 | 148 | 5,097 | Lanier | - | - | - | - | - | - |
| 3.08 | .27 | 2 | .12 | 149 | 4,551 | Clay | 118 | 8,960 | .34 | 2 | .52 | 1.53 |
| 3.08 | .37 | 2 | .12 | 150 | 4,543 | Baker | 126 | 7,973 | .31 | 2 | .52 | 1.64 |
| 3.08 | .37 | 2 | .12 | 151 | 4,539 | Towns | 145 | 3,932 | .15 | 2 | .52 | 3.47 |
| 3.70 | .37 | 2 | .10 | 152 | 3,874 | Long | - | - | - | - | - | - |
| 4.11 | .37 | 2 | .09 | 153 | 3,590 | Dawson | 141 | 4,686 | .18 | 2 | .52 | 2.84 |
| 4.11 | .37 | 2 | .09 | 154 | 3,370 | Taliaferro | 121 | 8,766 | .34 | 2 | .52 | 1.53 |
| 4.63 | .37 | 2 | .08 | 155 | 3,256 | Schley | 138 | 5,213 | .20 | 2 | .52 | 2.60 |
| 4.63 | .37 | 2 | .08 | 156 | 3,247 | Webster | 133 | 6,151 | .24 | 2 | .52 | 2.17 |
| 5.29 | .37 | 2 | .07 | 157 | 2,672 | Glascock | 142 | 4,669 | .18 | 2 | .52 | 2.89 |
| 6.17 | .37 | 2 | .06 | 158 | 2,432 | Oustman | 143 | 4,594 | .18 | 2 | .52 | 2.89 |
| 7.40 | .37 | 2 | .05 | 159 | 1,876 | Echols | 146 | 3,309 | .13 | 2 | .52 | 4.00 |

APPENDIX C.

Comparison of the Georgia County-Unit System Before and After Revision.

1. Minimum Proportion of Population Required (Hypothetically) to Cast a Majority of Total County-Unit Votes

- a. **Before revision**—**22.2%** of the total population of Georgia residing in **94 counties** could hypothetically cast a majority (206) of the total county-unit votes (410). See Exhibit A.
- b. **After revision**—**32.08%** of the total population of Georgia residing in **115 counties** could hypothetically cast a majority (274) of the total county-unit votes (547). See Exhibit B.

2. Comparison of Population Per County-Unit Vote in Largest and Smallest Counties (Fulton and Echols)

a. **Before revision**

Echols—938 population per county-unit vote.

Fulton—92,721 population per county-unit vote.

(See Exhibit A.)

b. **After revision**

Echols—938 population per county-unit vote.

Fulton—13,908 population per county-unit vote.

(See Exhibit B.)

- c. **Comparison of Voting Strength:** Voting strength in the Primary Election of Echols County to Fulton County was about **99 to 1** (92,721 divided by 938) before revision; about **15 to 1** (13,908 divided by 938) after revision.

3. Proportion of Total County-Unit Votes Allocated to Eight Largest Counties.

- a. **Before revision**—Eight largest counties were allocated **11.7%** of the total county-unit votes (48 divided by 410).
- b. **After revision**—Eight largest counties were allocated **24.1%** of the total county-unit votes (132 divided by 547), or more than double the former proportion.

4. Proportion of Total County-Unit Votes Allocated to Upper Half and Lower Half of the Counties (in terms of population)

- a. **Before revision**—Lower one-half (80 of 159) of the counties, in terms of population, were allocated about **39%** of the total county-unit votes (160 divided by 410).
- b. **After revision**—Lower one-half (80 of 159) of the counties, in terms of population, were allocated about **29%** of the total county-unit votes (160 divided by 547).

c. Conversely, for the **upper one-half**:

Before revision—Upper one-half allocated **61%** of the total county-unit votes.

After revision—Upper one-half allocated **71%** of the total county-unit votes.

5. Proportion of Total County-Unit Votes Allocated to Lowest One-third (53 of 159) of Counties (in terms of population)

- a. **Before revision**—Lowest one-third (53 of 159) counties were allocated about **26%** of the total county-unit votes (106 divided by 410).

- b. **After revision**—Lowest one-third (53 of 159) counties were allocated about **19%** of the total county-unit votes (106 divided by 547).

6. Proportion of Total County-Unit Votes Allocated to Upper One-third of Counties (in terms of population)

- a. **Before revision**—Upper one-third (53 of 159) counties were allocated about **48%** of the total county-unit votes (198 divided by 410).
- b. **After revision**—Upper one-third (53 of 159) counties were allocated about **60%** of the total county-unit votes (326 divided by 547).

7. Proportion of Total County-Unit Votes Allocated to Lowest One-fourth of Counties (in terms of population)

- a. **Before revision**—Lowest one-fourth (40 of 159) of counties were allocated about **20%** of the total county-unit votes (80 divided by 410).
- b. **After revision**—Lowest one-fourth (40 of 159) of counties were allocated about **15%** of the total county-unit votes (80 divided by 547).

8. Proportion of Total County-Unit Votes Allocated to Upper One-fourth of Counties (in terms of population)

- a. **Before revision**—Upper one-fourth (40 of 159) of counties were allocated about **42%** of the total county-unit votes (172 divided by 410).
- b. **After revision**—Upper one-fourth (40 of 159) of counties were allocated about **52%** of the total county-unit votes (287 divided by 547).

Appendix D.

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PROPORTIONS OF TOTAL ELECTORAL VOTES WHICH CAN BE CAST BY

VARIOUS PROPORTIONS OF THE POPULATION

POPULATION PROPORTIONS BASED ON STATES RANKED IN ORDER OF POPULATION

ELECTORAL - CUMULATIVE

| STATES RANKED ACCORDING TO POPULATION | POPULATION ALLOCATED | VOTES | TOTAL - ELECTORAL VOTES | CUMULATIVE TOTAL - % OF U.S. |
|---|----------------------|-------|-------------------------------|---------------------------------|
| | 1961 | 1962 | | |
| 1 NEW YORK | 16782304 | 43 | 43 | 7.32 |
| 2 CALIFORNIA | 15717201 | 40 | 83 | 14.12 |
| 3 PENNSYLVANIA | 11319366 | 29 | 112 | 24.43 |
| | | | <u>21.04</u> | |
| 4 ILLINOIS | 10081158 | 26 | 138 | 30.37 |
| 5 OHIO | 9706397 | 26 | 164 | 33.47 |
| | | | <u>36.52</u> | |
| 6 TEXAS | 7579677 | 25 | 189 | 40.81 |
| 7 MICHIGAN | 7823194 | 21 | 210 | 43.17 |
| 8 NEW JERSEY | 6066782 | 17 | 227 | 46.55 |

APPENDIX D.

| | | | | | |
|---|---------------|---------|----|-----|--------------|
| 8 | NEW JERSEY | 6056782 | 17 | 221 | 44.39 |
| 7 | MASSACHUSETTS | 5148113 | 14 | 201 | <u>44.72</u> |

44.32

| | | | | | |
|----|----------------|---------|----|-----|--------------|
| 1 | FLORIDA | 4051260 | 14 | 201 | 34.1 |
| 11 | INDIANA | 4662400 | 13 | 180 | 50.77 |
| 12 | NORTH CAROLINA | 4256153 | 13 | 201 | 22.21 |
| 13 | MISSOURI | 4319813 | 11 | 203 | 41.74 |
| 14 | VIRGINIA | 3956449 | 12 | 180 | 51.17 |
| 15 | WISCONSIN | 3951777 | 11 | 177 | <u>60.12</u> |

50.70

| | | | | | |
|----|-----------|---------|----|-----|--------------|
| 16 | GEORGIA | 3943116 | 12 | 327 | 60.32 |
| 17 | TENNESSEE | 3567089 | 11 | 340 | 73.34 |
| 18 | MINNESOTA | 3413864 | 10 | 350 | 72.24 |
| 19 | ALABAMA | 3266740 | 10 | 360 | 74.66 |
| 20 | LOUISIANA | 3257622 | 10 | 370 | <u>75.88</u> |

68.82

| | | | | | |
|----|------------|---------|----|-----|-------|
| 21 | MARYLAND | 3100689 | 10 | 380 | 77.61 |
| 22 | KENTUCKY | 3038156 | 9 | 389 | 79.30 |
| 23 | WASHINGTON | 2853214 | 9 | 398 | 80.90 |
| 24 | IOWA | 2757537 | 9 | 407 | 82.44 |

| | | | | | |
|----|-------------------|---------|---|-----|--------|
| 24 | IOWA | 2757537 | 4 | 407 | 52.43% |
| 25 | CONN. | 2535234 | 8 | 415 | 55.89% |
| 26 | S. CAROLINA | 2382594 | 8 | 423 | 55.18% |
| 27 | OKLAHOMA | 2328284 | 8 | 431 | 56.47% |
| 28 | KANSAS | 2178611 | 7 | 438 | 57.69% |
| 29 | MISSISSIPPI | 2178141 | 7 | 445 | 58.50% |
| 30 | W. VIRGINIA | 1860421 | 7 | 452 | 59.94% |
| 31 | ARKANSAS | 1786272 | 6 | 458 | 60.94% |
| 32 | OREGON | 1768667 | 6 | 464 | 61.92% |
| 33 | COLORADO | 1753947 | 6 | 470 | 62.90% |
| 34 | NEBRASKA | 1411338 | 5 | 475 | 63.69% |
| 35 | ARIZONA | 1302161 | 5 | 480 | 64.41% |
| 36 | PAID | 109269 | 4 | 484 | 64.96% |
| 37 | NEW MEXICO | 95123 | 4 | 488 | 65.49% |
| 38 | UTAH | 890627 | 4 | 492 | 65.98% |
| 39 | RHODE ISLAND | 859488 | 4 | 496 | 66.46% |
| 40 | DIST. OF COLUMBIA | 763956 | 3 | 499 | 66.89% |
| 41 | SOUTH DAKOTA | 680514 | 4 | 503 | 67.27% |
| 42 | MONTANA | 674767 | 4 | 507 | 67.64% |
| 43 | IDaho | 667171 | 4 | 511 | 68.02% |
| 44 | HAWAII | 632772 | 4 | 515 | 68.37% |
| 45 | NORTH DAKOTA | 632446 | 4 | 519 | 68.72% |
| 46 | NEW HAMPSHIRE | 606921 | 4 | 523 | 69.06% |
| 47 | DELAWARE | 446292 | 3 | 526 | 69.31% |
| 48 | VERMONT | 389881 | 3 | 529 | 69.53% |
| 49 | WYOMING | 330066 | 3 | 532 | 69.71% |
| 50 | ALABAMA | 285274 | 3 | 535 | 69.87% |

| | | | | | |
|----|-------------------|---------|---|-----|---------|
| 30 | W. VIRGINIA | 1860421 | 7 | 452 | 89.94% |
| 31 | ARKANSAS | 1786272 | 6 | 458 | 90.94% |
| 32 | OREGON | 1768607 | 6 | 464 | 91.92% |
| 33 | COLORADO | 1753447 | 6 | 470 | 92.90% |
| 34 | NEBRASKA | 1411330 | 5 | 475 | 93.88% |
| 35 | ARIZONA | 1302161 | 5 | 480 | 94.41% |
| 36 | MISSOURI | 1092000 | 4 | 484 | 94.96% |
| 37 | NEW MEXICO | 1051025 | 4 | 480 | 95.49% |
| 38 | UTAH | 890627 | 4 | 492 | 95.70% |
| 39 | WYOMIE ISLAND | 859488 | 4 | 496 | 96.46% |
| 40 | DIST. OF COLUMBIA | 763956 | 3 | 499 | 96.89% |
| 41 | SOUTH DAKOTA | 680314 | 4 | 503 | 97.27% |
| 42 | MONTANA | 674767 | 4 | 507 | 97.64% |
| 43 | IDAH0 | 667151 | 4 | 511 | 98.02% |
| 44 | HAWAII | 632772 | 4 | 515 | 98.37% |
| 45 | NORTH DAKOTA | 632446 | 4 | 519 | 98.72% |
| 46 | NEW HAMPSHIRE | 606921 | 4 | 523 | 99.06% |
| 47 | DELAWARE | 446292 | 3 | 526 | 99.31% |
| 48 | VERMONT | 389801 | 3 | 529 | 99.53% |
| 49 | WYOMING | 330006 | 3 | 532 | 99.71% |
| 50 | NEVADA | 285278 | 3 | 535 | 99.87% |
| 51 | ALASKA | 226167 | 3 | 538 | 100.00% |

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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1962.

No. 112.

JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee, et al.,
Appellants,

vs.

JAMES O'HEAR SANDERS,
Appellee.

Appeal from the United States District Court for the
Northern District of Georgia, Atlanta Division.

BRIEF ON BEHALF OF APPELLEE.

I.

STATEMENT OF THE CASE.

The facts, inferences aside, as stated by the Appellants in their Statement of the Case are correct.¹

¹ Appellants ignore, for example, the fact that Congressman James C. Davis would have achieved his eighth renomination in the Fifth Congressional District had the governing body of the Democratic Party in that race used the former unit rule which it voluntarily abandoned after the Court's opinion below. However, on a popular vote, Congressman Davis was defeated as he would have been on two previous occasions on which he prevailed by county units. Appellants do not refer to the soaring registration of voters in populous counties and the heavy votes

It should perhaps be noted that the Party authorities made no attempt to employ a unit rule such as would have met the standards laid down by the panel court. Nor did they or any of the Appellants seek a stay of that court's decree in this Court. There has not been the slightest suggestion or inference from any source that the opinion of the panel court has "impaired" the Court's position," or "lost public confidence in its moral sanction" or has demonstrated "the futility of judicial intervention" in this field.²

In their Statement of the Case, the Appellants allude to the fact that subsequent to the filing of **Toombs v. Fortson**, 205 F. Supp. 248, the upper house of the Georgia Legislature was reapportioned. Appellants then suggest that this development "may have some bearing on the issues of this case . . ." (Appellants' brief, p. 10). As of this date, the lower house still reflects precisely the same malapportions present in the unit system before it was revised on April 27, 1962. That house, of course, must pass on all legislation, including any further revision of the county unit system were this Court to reverse the panel court below.

cast there following the demise of that unit rule." Moreover, the successful candidate for Governor, Carl Sanders, qualified unexpectedly for the office only after the Court's opinion below. He was the first successful candidate for the office who resided in a populous county in over forty years. Appellants did not refer to the vast change in campaign tactics in the recent primary in which Georgia's urban citizens, comprising more than 50% of the population were assiduously courted regardless of race. It is merely an assumption and probably false that the primary results for statewide offices would have been the same under the unit as popular vote. See Appendix A. Moreover, the decision below was rendered only a week before entries to the primary were closed. It is impossible to say what results would have obtained because we do not know what candidates would have qualified, if it had been known for a longer period of time that a popular vote would prevail.

² See dissenting opinion of Mr. Justice Frankfurter, *Baker v. Carr*, 309 U. S. 180, 74 L. Ed. 24 (1962).

II.

QUESTIONS PRESENTED.

As stated in Appellee's Motion to Affirm, the questions presented by him may be subsumed under those of the Appellants. These are two:

1. May a primary election, governed by state law and an integral part of the procedure of choice and which in fact effectively controls the choice of state house officials, be conducted by a county unit method despite the provisions of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution?

2. May a primary election, governed by state law, and an integral part of the procedure of choice and which in fact effectively controls the choice of United States Senators, be conducted by a county unit method despite the provisions of the Seventeenth Amendment to the Federal Constitution which requires that elections of said Federal offices be "by the people" of the states?

III.

SUMMARY OF POSITION.

1. The Georgia Democratic Primary is governed by state law; is an integral part of the procedure of choice for state house offices and United States Senators from Georgia; and effectively controls the choice for these offices. This primary is therefore constitutionally protected by the Equal Protection Clause of the Fourteenth Amendment and is an election within the meaning of the Seventeenth Amendment to the United States Constitution.

2. The issues presented here involve the franchise, not legislative representation. Histories of legislative assembly

blies are not relevant to the constitutional principles here involved. The history of the county unit system itself is similarly irrelevant save as it demonstrates a purposeful and effective discrimination against urban centers and negro voting.

3. The statute attacked and as amended violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when applied to any primary for state house officers and United States Senators.

4. The statute attacked and as amended violates the Seventeenth Amendment to the United States Constitution as applied to any primary for United States Senator from Georgia.

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IV.

ARGUMENT.

1. Democratic Primary Subject to Constitutional Provisions.

The Georgia Democratic Primary is constitutionally protected by the Equal Protection Clause of the Fourteenth Amendment and is an election within the meaning of the Seventeenth Amendment to the United States Constitution.

Primaries in Georgia are strictly governed by state law, of which the statute attacked is but a part (R. 14-24). In addition to those provisions contained in the record, others, civil and criminal, govern and protect the primary.³

Georgia Code § 34-3218 (R. 20) provides as follows:

"Laws of force.—All the laws in reference to the qualification of voters and their registration . . . apply to (primary) elections . . ."

The basic law in the field is a provision of the State Constitution. Article II, Section I, Paragraphs I and II, Georgia Constitution (R. 14 and 15), provide inter alia:

"Elections by the people shall be by ballot . . ."
(Emphasis supplied.)

and

"Every citizen of this state who is a citizen of the United States, eighteen years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and

³ See *Chipman v. King*, 154 F. 2d 460, at 463-4 (C. A. 5, 1946).

vote at any election **by the people** . . .” (Emphasis supplied.)

The primary laws are inextricably intertwined with the voters' qualification and registration laws, which are in turn derived from the Georgia Constitution. Consequently, even regulations of the Georgia Democratic Party constitute “state action” within the meaning of the Fourteenth Amendment. This is the holding of **Chapman v. King**, 154 F. 2d 460 (C. A. 5, 1946):

“Under Georgia Law, primary election to select candidates for federal and state offices is an integral part of electoral process of the State . . . and regulations presented by party executive committee under statutory authority limiting participant voters to white qualified electors constituted ‘state action’ within the Fourteenth and Fifteenth Amendments.”

The Georgia Supreme Court holding in **Cox v. Peters**, 208 Ga. 498, 67 S. E. 2d 579 (1951), appeal dismissed 342 U. S. 936, that the Democratic Primary under the unit rule is not “the election” is not only erroneous⁴ but beside the point. Moreover, the Georgia Democratic Party is and has been the instrument controlling the choice of state house officers and United States Senators from Georgia since the beginning of this century. The record shows that “Georgia has been a one-party state since the removal of the Federal troops in 1871. Few Republicans have held office in the state since this time. None but Democrats have held a state (house) office since the 1890 decade, after which period this party has been com-

⁴ The majority of the Court in *Baker v. Carr*, supra, said of *Cox v. Peters*: “But compare *Terry v. Adams*, 345 U. S. 461.” The *Terry* case involved a pre-primary primary not regulated by state law for county and precinct offices. There was no history of this procedure controlling any choice. The relief granted in that case disposed of any question of the protection of the Georgia Democratic Primary by the Fourteenth Amendment.

pletely in control of statewide elections" (R. 115). Appellant Fortson, the State Archivist, while not affirming the Appellee's request for admission (Request = 9 R. 41) that no candidate, other than the nominee of the Democratic Party, for any state house office and United States Senator had been elected thereto since 1872, did not deny these assertions (R. 55). Appellant Fortson, responding to Appellee's request for admission (Request = 30—R. 46), did not deny that since 1900 no candidate for United States Senator or state house office had been on the general election ballot other than the candidate of the Democratic Party—except to say that "In 1940 Eugene Talmadge appears on the general election ballot as candidate for governor as nominee of the 'Independent Democratic Party' " (R. 57-58).

The Georgia Supreme Court in **Thompson v. Talmadge**, 201 Ga. 867, 41 S. E. 2d 883 (1947), reviewed the history of the Georgia Democratic Primary for Governor as of 1948. (The subsequent history of that office and for the United States Senator from Georgia will not differ.) The Court said:

"Moreover, we are authorized, if indeed not required, to give consideration to the history of elections for Governor over a period of approximately half a century before the drafting and submission of the present Constitution, and its ratification by the voters in 1945. Throughout that period there had been one and only one dominant political party in this State. That party was and is the Democratic Party. Every Governor throughout that period was a Democrat, nominated by the Democrats of Georgia in a Democratic Primary, after a campaign in which vital issues were discussed throughout the State and embodied in a platform of principles upon which he sought nomination. The only opposition in the general elec-

tion that any Democratic nominee had ever encountered throughout such period was an 'Independent,' or a member of some minor opposing party, and some write-in votes for persons who were not candidates" (pp. 884; 897).

The tradition of the century prevailed in November, 1962. None other than Democrats offered in the general election for any state house office nor for the United States Senate. As a practical matter, no Georgia governor nor Senator has been effectively elected within the memory of living men in any but the Democratic Primary.

In non-presidential election years, except when some grave constitutional issue (such as the attempt to engraft the county unit system into the Constitution), is to be voted upon, the general election vote is only a fraction of the primary vote (R. 147).

The Legislature in enacting statutes governing primaries, including the one attacked, has referred to these consistently as "primary elections." As we have noted, qualification of voters in the Georgia Democratic Primary, including that for United States Senators, are derived from the constitutional provisions governing "elections by the people." By tradition, by Constitution, by statute, and by result, the Democratic Primary is not only an election, but **the** election in Georgia for all state house offices and for United States Senators.

2. Franchise, Not Legislative Representation at Issue.

The issues presented here involve the franchise, not legislative representation. The histories of legislative

Under the Fourteenth Amendment claim, it is not necessary that the Appellee show that action under the "any race" provision in an election. All that is required is that he show that state action is involved. Under the Seventeenth Amendment claim, it is necessary that the Appellee establish the primary of "an election" for United States Senator.

assemblies are irrelevant. So is the history of the county unit system except as it demonstrates a purposeful and effective discrimination.

Representation—A Shared Right; Voting—A Personal Right.

Though frequently confused, the merits of a county unit case have logically and traditionally no relevance to a legislative representation case. The confusion arose because apportionment precedents were continuously cited **as authority to deny a judicial hearing** on the merits of a county unit case.⁶

Except in a Swiss canton or a New England town meeting where every man represents himself, a citizen is represented by delegates chosen by himself and others. The district all shared the representation. They must; there is no other way.

Almost everywhere voting in the American states is a **personal** right. One does not normally share this right. See **United States v. Bathgate**, 246 U. S. 220 at 227, 62 L. Ed. 676, at 680 (1918), where this Court stated: "The right to vote is personal." No weighting or division of

⁶ This Court, in *Baker v. Carr*, adopted much of the reasoning set forth by majority in *Hartfield v. Sloan* (October Term, 1957, Case No. 783 Misc.). *Hartfield* contended that past county unit cases and the representation cases which had barred him a hearing on the merits all had floundered on the Court's application of the doctrine of equitable discretion. *Hartfield* insisted that neither jurisdictional nor constitutional questions involving the separation of powers were involved in any of the precedents cited to oppose him. He further contended that the questions of equitable discretion should be resolved in his favor due to the ease with which the decree could be entered and relief applied in a county unit case. *Baker v. Carr*, supra, had to rest all of the issues of standing, jurisdiction and justiciability which had previously beset county unit suits. Apparently the Appellants here agree for they have neither presented nor argued such questions on this appeal.

this right is ever necessary nor is it usual. What inference follows from these circumstances?

A Court seeking to apply Equal Protection standards to **representation cases** must perforce fashion standards and apply them to constantly shifting populations and other possible but reasonable criteria. There is no other way except to decree the end of all districts and to require statewide elections.

No such difficulties are presented in franchise cases. The relief prayed in such a case is simple: Abolish or forbid the utilization of the contrived step by which the **normal** popular tabulations are converted into a weighted and distorted result. Mr. Justice Douglas in **South v. Peters**, 339 U. S. 276, 94 L. Ed. 834 (1950), put the point succinctly:

"The rights they seek to enforce are personal and individual. Moreover, no decree which we need enter would collide either with Congress or with the election. Georgia need not be remapped politically. The Georgia Legislature need not take new action after our decree. There is no necessity that we supervise an election. There need be no change or alteration in the place of the election, its time, the ballots that are used, or the regulations that govern its conduct. The wrong done by the County Unit System takes place not only after the ballots are in the box but also after they have been counted. The impact of the decree would be on the tallying of votes and the determination of what names go on the ~~general~~ election ballot. The interference with the political processes of the state is no greater here than it is when ballot boxes are stuffed or other tampering with the votes occurs and we take action to correct the practice."

The simplicity of the remedy sought and achieved below has a bearing on the issue of justiciability. This is ob

viously the teaching of the **Baker** case. The majority in **Baker** said "jurisdiction" and "justiciability" had sometimes been confused. On jurisdiction a court inquires whether the matter arises under Article III, Section II of the Federal Constitution, is a "case" or "controversy", and is of a cause described by jurisdictional statute. On justiciability, the court inquires "Whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded."

In **Baker**, despite the obvious complications of molding a representation and apportionment decree, all but two justices felt the issue justiciable. The issue before this Court is clearly justiciable and jurisdiction is equally clear. On standing, jurisdiction and justiciability, the **Baker** case supports the petition at bar unless in the words of Mr. Justice Brennan the "claim (is) so attenuated and unsubstantial as to be absolutely devoid of merit."

History of Representation Irrelevant; History of the County Unit System Shows a Pattern of Intentional Discrimination Against Urban and Negro Voters.

The Primary did not become a statewide institution in Georgia until 1898 (Appellants' brief, p. 31). The Fourteenth Amendment was not adopted until 1868; the Seventeenth Amendment in 1913. History of the colonial period is scarcely relevant to the issues which here arise under these amendments.⁷

The history of the theory and practice of representation in legislative assemblies throws no light on questions of

⁷ Once Georgia was a colony; but a constitutional Governor today may not claim royal prerogatives. Once slavery was legal; once the Governor was named by the Legislature; none of these circumstances can tarnish the rights a citizen may enjoy under the United States Constitution.

franchise dilution and debasement. Far more to the point is the explicit provision of the Georgia Constitution of 1945:

"Origin and Foundation of Government—All government, of right, originates with the people, is founded upon their will only, and is instituted solely for the good of the whole. Public officers are the trustees and servants of the people, and at all times amenable to them."

The history in this record shows that the county unit system fits somewhat in the pattern to which Mr. Justices Frankfurter and Harlan alluded in their dissent in **Baker v. Carr**:

"This is not a case in which a state has, through a device, however oblique and sophisticated, denied Negroes or Jews or Red-Headed persons a vote or given them only one-third or one-sixth of a vote. That was *Gomillion v. Lightfoot*, 364 U. S. 339."

The affidavit of Professor Bonner (R. 93-118) shows the county unit system to be a discrimination which has grown out of and has been nourished upon a history of rural antagonism to urban centers and is connected with negro disfranchisement. The latter factor in the unit system is interwoven as a Georgia reaction to this Court's history of protection of the negro's right to vote. When Reconstruction was terminated, Georgia established a constitutional convention to write the organic law of 1877. White Democrats nominated convention candidates and their county leaders urged these to be supported in the general election (R. 105-106). When the white primary system was threatened by the rise of Populism, the "Grandfather Clause" was enacted in 1901 (R. 107). The "Grandfather Clause" approach was invalidated in this Court in 1915. **Guinn v. U. S.**, 138 U. S. 347 59 L. Ed.

1340. In 1917, the first county unit statute was enacted. Previous to that time, it had been in use as a party rule. At that time "it was clear to most politically minded men that such a device as the county unit system was needed if the reappearance at some time in the future of large numbers of negro voters was to be prevented" (R. 111).

Still, as no second party emerged, the white primary continued to be an effective instrument for Negro disfranchisement until 1946 following **Smith v. Allright**, 321 U. S. 649, 88 L. Ed. 987 (1944), and **Chapman v. King**, 316 F. 2d 460 (C. A. 5, 1946). Thereafter, nothing legally remained to accomplish Negro disfranchisement save the county unit system. Then it was that the naked racial arguments in the defense of the system and for its extension into the general election machinery were unabashedly advanced (R. 112).

The usefulness of the county unit system as an implement of Negro disfranchisement is implicit in the figures furnished by Appellant Fortson (R. 165). These show that in general, Negro registrations are low (and in some cases non-existent) in counties whose people enjoy disproportionate voting power under the unit rule. The record (p. 91) shows a list of counties in which Negro registration in 1958 was less than 10% of the Negro population of voting age (there are thirty-one such counties), and the "inequality ratio" of the county. The record (p. 92) shows the percentage of Negro registrations to Negro eligibles in the ten largest counties and the "inequality ratio" in these.

Professor Bonner summarizes the situation (R. 114):

"While Negroes represented 29 per cent of the total voting-age population of the state, they were still

² The figures are as of 1958, the last year they are available.

only 12 per cent of the total voter registration. However, this 12 per cent was heavily concentrated in the larger urban centers. The highest registrations of Negroes were in Fulton, Bibb, Richmond and Muscogee counties. With the exception of those in Liberty and McIntosh and several other counties, rural Negroes remained substantially unregistered in 1950. These facts had a considerable bearing upon the determination of rural law-makers to maintain the county unit system."

3. County Unit System Denies Equal Protection.

The statute attacked and as amended violates the Equal Protection Clause to the United States Constitution when applied to any primary for state house officers and a United States Senator from Georgia.

The Appellee contends here, as before the panel court, that in a **voting** or **franchise** case, as contrasted with a **representation** case, no classification is permissible under the Equal Protection Clause by which the vote of one qualified voter is diluted, distorted or reversed." The Appellee contends here that the county unit system per se is unconstitutional under the Fourteenth and Seventeenth Amendments.

Consistent with the Fourteenth Amendment's Equal Protection Clause, a state may, as Georgia has, establish reasonable qualifications for voters. Once these qualifications are established, however, the state may not thereafter discriminate amongst those whom it has qualified, granting to some a fraction of a vote and according to others many times that. The Georgia Supreme Court has held that

"As and for the reason stated in Appellants' Motion to Advance (p. 10, footnote 8) the standards established for a "constitutional" county unit system by the panel court ineluctably bind the appellants to a popular vote.

once the qualifications of voters have been established, the power of further classifications by statute is constitutionally exhausted. See **Tolbert v. Long** and **O'Kelly v. Long**, 134 Ga. 292, 67 S. E. 826 (1910).

There is a difference in the classification permitted in legislative districting and in voting. In the former instance, in order to avoid elections at large and to accord various groupings within the population some representation, districting is essential. Of course, no districting, however fair the intention, can create mathematically equal districts. Districting is perforce a form of classification which requires the exercise of judgment and selection. This process, under the rule of **Baker v. Carr**, must proceed pursuant to constitutional standards developed under the Equal Protection Clause.

In a franchise case, however, no further classification is required in order to give each voter a share in the election. The vote of each voter is his share. Weighting and devaluation of the franchise of particular voters, even if accomplished by a perfectly consistent pattern, is not an allowable state policy for such classification could not serve any rational end, and its only purpose could be discrimination.¹⁰

The panel court did not adopt the argument of Appellee that a county unit system per se violates the Equal Protection Clause. The panel court in this respect was in error.

¹⁰ Throughout the constitutional debate and the discussion of political philosophy cited by Appellants, nowhere is it suggested that in the area of franchise as such there should be any classification or weighting of individual votes.

The Georgia County Unit Law As Amended, If Not Unconstitutional Per Se, Violates the Equal Protection Clause as an Unreasonable, Arbitrary and Capricious Classification Which Established a Pattern of Invidious Discrimination Amongst Georgia Voters.

Amply grounds exist for declaring the amended county unit act unconstitutional as an arbitrary and capricious discrimination even in a field where some classification were permissible.

The statute attacked reflects no policy except to accord to less people more voting power than to more people. Working towards this result, the Legislature achieved it by totally inexplicable and indefensible means.

Prior to the amendment of the county unit statute, the Appellants argued that the Neill Primary Act was a consistent system of classification in that counties had either 6, 4 or 2 unit votes, depending upon the population grouping into which each fell. Efforts to repeal or modify the county unit system had been of no avail until the complaint was filed in this case on March 26, 1964. Nine days later, on April 5, the Governor called an Extraordinary Session of the Georgia General Assembly to meet April 16 and also groups of legislators to convene earlier to "meet the threat to the county unit system posed by pending Federal Court litigation" (R 168, 169) and to "preserve, protect and defend the **traditional** Democratic institutions **existing** in this state". (Emphasis supplied). The record shows through a Fulton County representative present in one of the pre-session legislative conferences that "from counsel participating with the Governor in the conference it was clear that the purpose of the conference and the legislative call was to preserve the county unit

system without breaking down the traditional voting strength of the smaller counties under the county unit system as now enforced" (R. 167).

Appellants now allude and rely upon the amendment to the county unit law as having established "... a bracket system ... which gradually reduced the percentage of unit votes per given number of persons in each succeeding larger population bracket" (Appellant's Brief, p. 6). This amendment is the successor to the Governor's so-called 545 "Equal Proportions" unit proposal (R. 129, 144). Under the said 545 unit proposal, the 121 smallest (2-vote) counties containing 30.8% of the population eligible to vote would have been stripped from 59% of the state's unit votes to 44.4%, though the 14 largest counties with 50.4% of the eligibles would have only been accorded 39.8% of the units. This 545 unit proposal which would have cost some counties some unit votes was quickly abandoned.

To prevent any county from losing any unit votes another "Equal Proportions" proposal was advanced by the administration during the Extraordinary Session. The mathematics of this proposal were developed by Professor Gaylord (R. 144) under the heading "No Counties Losing Votes—'Equal Proportions'". This proposal never really was seriously considered. It would have given the 14 largest counties with 50.4% of the persons eligible to vote 44.7% of the units, while the 121 smallest counties with 30.8% of the eligibles would have been reduced to 37.6% of the unit votes.

Considered, however, and passed by the Georgia Senate but finally rejected, was a Senate Rules Committee substitute for the 547 unit law. That Senate substitute would have provided for 930 units, of which Fulton County would have received 112. The Senate substitute would have accorded Fulton County with 14.1% of the state's

population, 12.0% of the unit votes. The 547 proposal, which is the present law, accords Fulton but 7.3% of the units.

The 547 plan substituted contained no "equal proportions" feature. It is this plan which became the amendment to the Neill Primary Act and which the Appellee amended his complaint to attack during the course of the hearing below.

The amended acts "bracket system" assigns units thusly: Counties from 0-15,000 population receive 2 units; then there was an increment of one unit for the next 4,999 persons; then an increment of one unit for 14,999 persons; then an increment of one unit for 14,999 persons; and thereafter increments came in pairs—but only pairs—of 2 units for 29,999 persons. Under this new device, no counties above 60,000 could receive any increment for less than a 30,000 population gain. At the top of the population scale a gain of 30,000 persons would entitle a county to 2 additional units; at the bottom of the scale, the same population gain would beget 4 units. At the top, a 29,000 population increase receives no unit increment; at the bottom, such a gain entitles a county to 4 units.

Neither geography, ruralism, occupation nor relative size will account for the inequalities in the unit assignments: Taliaferro County is a small (2-vote) county, rural and agricultural. It is surrounded by six small (2-vote) rural and agricultural counties: Wilkes, Oglethorpe, Greene, Hancock, Warren and McDuffie (R.-177). Taliaferro received 1 unit for 1685 persons; Warren, one for 3680; Oglethorpe, one for 3,963; Hancock, one for 4,989; Wilkes, one for 5,400; Greene, one for 5,596 and McDuffie, one for 6,313. The discrimination against citizens of Fulton County are paralleled by those within the brackets of smaller counties. Echols, a 2-vote county receives one unit for each 938 persons. Screven County, a two-vote county, one unit for

7,459 persons. Screven County suffers another discrimination when compared to the treatment accorded Hart County. Hart contains only 310 more persons than Screven and thereby received an extra unit. Hart and Screven, each bordering the Savannah River, are rural counties without large cities. One has a unit for 7,459 persons; the other a unit for each 5,076.

As stated in Appellee's Motion to Affirm:

"Throughout the State, units were assigned in a 'crazy-quilt' pattern creating grave and absolutely senseless disparities amongst counties in the same geographic areas. Here are but a few examples: In the Sixth Congressional District, Crawford County, adjoining Bibb, has a unit per each 2,900 people; Bibb one unit per 11,000 population. In the Eighth Congressional District, Echols County, adjoining Lowndes, has one unit per 900 persons; Lowndes, one unit per 8,000 people. In the Fifth Congressional District, Rockdale County, adjoining DeKalb, has one unit per 5,250 people; DeKalb one unit for each 12,850 people. In the Tenth Congressional District, Oconee County, adjoining Clark, has one unit per 2,100 people; Clark one unit per 7,500 persons."

"Fulton County voters under this new Act were accorded but .52% of an equal vote but Echols voters were given 7.69 times an equal vote. Through the state, the advantages and disparities fell, not in any geographic location, but haphazardly. Rural people in Fulton County (which ranks third in rural population amongst the 159 counties of the State) suffered the same discrimination as the urban people in Fulton. Bankers in Twiggs were advantaged in the same way as the tenant farmers living there. The basis, if any, of the classification was not geographic but by population, the more the people, the less the vote of each."

If any classification were permitted amongst qualified voters so that some would have one-half a vote and others fourteen times that, such would have to be based on some legitimate public purpose and not caprice. The Appellee contends that his right to vote is as Mr. Justices Douglas and Black have said in **South v. Peters**, supra, "personal and individual". But if these rights were not, the Equal Protection Clause cases establish, to use the words of Mr. Justice Brennan in **Baker v. Carr**, standards which "are well-developed and familiar." From the hundreds of cases decided under the Equal Protection Clause, certain criteria and guidelines clearly emerge. Any investigation into the question of proper classification under a particular factual situation must begin with the nature of the subject matter of the classification.

"In determining what is within the range of discretion and what is arbitrary (classification), regard must be had to the particular subject of the State's action." **Smith v. Cahoon**, 283 U. S. 553 at 567; 75 L. Ed. 1264, at 1274 (1931).

The classification must rest on real and substantial differences between the classes, having a natural, reasonable and substantial relation to the subject of the legislation. The classification must be such that all persons "similarly situated" receive equal treatment. The class itself must be germane to the purposes of the law and the individual components of the class must be characterized by some substantial qualities or attributes which suggest the need for and the propriety of the division into such class. There must be a natural, inherent and intrinsic difference between the components of the class which establishes the need or desirability of unequal treatment. Classification by territory or population is permissible only when the subject matter of the legislation lends itself to such classification and when, because of the nature of the subject matter dealt with, territorial or population classification

is able to separate or isolate individuals having attributes distinct from those living outside the territory or population group.

How stands the county unit system under a rule of reasonable purpose?

Is it a classification based on educational levels? If so, presumably a rational plan, i. e., one not merely invidiously discriminatory, would grant to counties with higher educational levels a voting premium. The county unit system does the opposite (R. 159).

Or is the classification based on property and income? Many voter qualifications have been so based. The rationale of such qualifications have had some appeal on the supposition that those with substance have a stake justifying an interest and a need to protect the same by government. A rational classification would therefore traditionally accord those with a greater stake the voting premium. The county unit system does the opposite (R. 157, 158, 159).

Or is the classification based on geography or region? Sometimes the unit system has been referred to as a "geographical distribution of electoral strength." **South v. Peters**, supra. Let us determine whether Georgia has made such a classification in its unit distribution. Presumably the purpose of such a plan, if rationally conceived, would be to treat such geographic areas as such with either a greater or lesser voting influence. Some consistency of treatment would therefore be expected amongst geographically similar areas. The following counties all lie in the North Georgia mountains, none far separated and some adjoining. This is the unit distribution per population amongst them:

| | |
|----------------|-------------|
| DAWSON | 1 for 1,795 |
| TOWNES | 1 for 2,269 |
| LUMPKIN | 1 for 3,620 |
| RABUN | 1 for 3,728 |
| PICKENS | 1 for 4,451 |
| FRANKLIN | 1 for 6,637 |

The following counties are in a tier in the extreme Southwest section of the State bordering on Alabama. The units are distributed amongst them thusly:

| | |
|----------------|-------------|
| QUITMAN | 1 for 1,216 |
| CLAY | 1 for 2,275 |
| SEMINOLE | 1 for 3,401 |
| EARLY | 1 for 6,575 |

The following counties constitute the Southern border of Georgia. They received units as follows:

| | |
|----------------|-------------|
| ECHOLS | 1 for 938 |
| CHARLTON | 1 for 2,656 |
| CLINCH | 1 for 3,272 |
| CAMDEN | 1 for 4,987 |
| BROOKS | 1 for 5,097 |
| GRADY | 1 for 6,003 |
| DECATUR | 1 for 6,300 |
| WARE | 1 for 6,843 |
| THOMAS | 1 for 6,863 |
| LOWNDES | 1 for 8,211 |

The exercise could be repeated for every region, soil belt, climate area, whatever geographical factor by which one could conceivably classify. There is simply no rationality or geographical principles to be found in the distribution of unit strength.

Could it be that the distribution of units was made to prevent an accumulation of voting strength in metropolitan areas? Then why were the people in the five-county metropolitan area around Atlanta, recognized as a func-

tionally unified complex and so considered for other purposes, treated differently within the counties comprising the complex? Those in Clayton County enjoy one unit for 7,727 persons; in Fulton adjoining, separated at points by a street, the neighbor shares a unit with 13,908 others. In Cobb County, the distribution is one unit for 11,417; in DeKalb one for 12,836; in Gwinnett, one for 8,708. To move across the street or river in this metropolitan complex, can cost a citizen whose place of work remains the same, up to one-half of his influence as a voter. Should an Atlanta businessman or laborer move across the Fulton line to adjoining Forsyth County, he could improve his influence to the ratio of one unit for 6,085. Should he go one county north to live in Dawson and work in Atlanta, he could receive a further electoral bonus. The unit strength there is 1 for 1,795.

Many rationalizations have been attempted for the county unit system; but there is only one explanation for it: It is designed to accomplish minority rule of the majority. The 547 amendment to the unit law by design left the 121 smallest counties 49% of the electoral power—within 1% of control.¹¹ When the panel court offered the Legislature or the Democratic Party an opportunity to construct a county unit system limiting this impact, neither the State nor the Party authorities showed the slightest disposition to adopt such a plan. The purpose of the exercise was discrimination and minority control. If this is limited, the inducement (and the "rational explanations") for an electorally voting system evaporate.

The county unit statute as amended is subject to the same infirmities which have caused every judge and justice

¹¹ The record (p. 143), contains a demonstration of the percentage of voting strength of persons in age groups eligible to vote which are needed to elect under the amended county unit statute in races between from two to five candidates. In the former instance, 15.4% of these eligibles could elect; in the latter, only 6.1% is absolutely required.

who ruled the issue justiciable to declare it unconstitutional. See dissenting opinion of Judge Andrews in **South v. Peters**, 89 F. Supp. 672; of Justices Douglas and Black, **South v. Peters**, 339 U. S. 276, 94 L. Ed. 834, and, of course, the unanimous opinion of the panel court in this case. Moreover, the Tennessee Supreme Court in 1938 held that Tennessee's county unit statute was unconstitutional. The Tennessee unit system was an "open end" device which gave every county its unit vote equivalent to 1% of the votes cast there in the previous gubernatorial election. This tied voting power to votes cast in the previous election. Nevertheless, the system failed its constitutional test under the Equal Protection Clause in **Gates v. Long**, 113 S. W. 2d 388. The infirmity found was contained in the one exception to the ratio between units and votes cast. That exception provided that no county could have more units than $\frac{1}{8}$ of 1% of its population. Though this rule was uniformly applied to all counties, large and small, the Tennessee Supreme Court could find no rational basis for classifying voting influence so as to punish citizens whose areas vote in large numbers. The Tennessee Supreme Court stated:

"In our form of government a large vote in a constitutional election cannot be regarded as an evil, and dealt with as such under the police power of the state. On the contrary, universal exercise of the right of suffrage must be regarded as the ideal support of democratic institutions."

The record (R. 87) shows how Fulton County and Echols County would have fared under the Tennessee Law. The facts are as shown below:

| County | Pop. | Unit Under Present Law | Max. Votes Under Tenn. Law | Votes Cast in 1958 | United Votes Assigned Without Regard to $\frac{1}{8}$ of 1% Limitation |
|--------|---------|------------------------|----------------------------|--------------------|--|
| FULTON | 556,326 | 40 | 695 | 83,265 | 833 |
| ECHOLS | 1,876 | 2 | 3 | 588 | 6 |

Appellants attempt to place a statewide Georgia Democratic Primary on the legal plane of a party convention. Of course, such a contention, if adopted, would under-~~mine~~ *all* the white primary cases. Justices Douglas and Black disposed of this argument in **South v. Peters**:

"It is said that the dilution of the plaintiffs' votes in the present case is justified because equality of voting is unnecessary in the nomination of United States Senators. Thus it is pointed out that in some states nomination is by conventions. But that proves too much. If that premise is allowed, then the whole ground is cut from our primary cases since *Nixon v. Herndon*, which have insisted that where there is voting there be equality."

The Electoral College Analogy.

The Federal Electoral College analogy relied upon by the appellants and partially adopted by the panel court in its decision is unsound. The Electoral College is not derived from a planned intention to discriminate against populous areas, but from a purpose to represent states **as such and** the populations thereof in an admixture of electoral strength. The sharing of this electoral strength by popular voting for electors within the state is an historical accretion. Nor is there any constitutional provision for the unit rule by which electors in most states cast their ballots. Popular voting for electors is itself a concession to popular government.¹² The Georgia state house officers and United States Senators are, under Georgia's own Constitution, required to be elected by the people. Georgia is not and never has been the "United Counties of Georgia." No com-

¹² Aside from any explicit preference for the indirect election of the American President, it would have been physically very difficult to have conducted national campaigns and elections in those times before railroads, electric communication and national parties.

promise amongst Georgia counties made Georgia. Georgia made each of its counties and has unmade a few.¹³ It is true, however, that until the panel court's decision below, counties did rule Georgia.

In any comparison of the county unit system with the Electoral College, one is struck by the fact that neither under the Neill Act nor the Amendment thereto did the assigned units fluctuate directly with population. The Electoral College does once account has been taken of the three votes to which every state is automatically entitled.

4. County Unit System Violates Seventeenth Amendment.

The use of the county unit system in a primary election for United States Senator violates the Equal Protection Clause of the Fourteenth Amendment and it also violates the Seventeenth Amendment which required that this Federal office¹⁴ be "elected by the people of the several states". The Seventeenth Amendment does not leave the above requirement with that simple command but goes further

¹³ Campbell and Milton were combined with Fulton on January 1, 1932. Predictably, Fulton did not receive the unit votes of the counties which it absorbed.

¹⁴ The right to vote for U. S. Senator is derived from the Federal Constitution. This Court held in *U. S. v. Classic*, 313 U. S. 299, 85 L. Ed. 1368, that the right to vote for a United States Representative was derived from the Federal Constitution, Article I, Section II. The right to vote for United States Senator is similarly derived but from the Seventeenth Amendment. The *Classic* case further defines what an "election" is within the meaning of this Federal right.

"Where the State law has made the primary an integral part of the procedure of choice, or where *in fact*, a primary effectively controls the choice, the right of an elector to have his ballot counted, is likewise included in the right protected by Article I, Section II."

The same rule obviously applies in case of the election to Senate since the adoption of the Seventeenth Amendment.

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and defines the class who shall comprise voters for that office:

"The electors in each state shall have the qualifications required for electors of the most numerous branch of the State Legislatures."

Georgia, under this amendment, may define the qualifications of electors and has in Article II, Section I, Paragraphs I-IV of its Constitution, previously cited. The Constitution of Georgia did not establish a unit system for voting in an election for the most numerous branch of its Legislature and none has ever been so employed, either by statute or custom. Georgia, having defined the electors for its most numerous legislative branch, cannot constitutionally, under the Seventeenth Amendment, by statute, party rule or custom, establish a different electoral system for the United States Senate. County units are not people and neither history nor tradition can make them so. The entire purpose of the Seventeenth Amendment may be subsumed under the textbook rubric which refers to it as the provision "For the Popular Election of Senators."

The Democratic Primary of Georgia is an election for United States Senator, of that there can be no doubt (See p. 4 et seq. of this brief). Through the operation of the county unit system, the United States Senator from Georgia has been elected by substantially less than a majority of the votes cast for that office. In 1938, the successful candidate in the primary election polled 141,285 popular votes out of 321,311 cast (R. 133).

The election of Senators by units is as contrary to the Seventeenth Amendment as a choice by Legislatures or by other elections through a representative process. The Seventeenth Amendment forbids the indirect election of United States Senators and the county unit system is nothing, if not that.

V.

CONCLUSION.

The county unit system for party primaries in Georgia is violative of the Equal Protection Clause of the Fourteenth Amendment and the provisions of the Seventeenth Amendment. The statute attacked which results in dilution and distortion of votes is per se unconstitutional and is further invalid because of the invidious discrimination thereby established. The statute attacked is further invalid as a denial of the constitutionally protected right to vote for United States Senators from Georgia.

Respectfully submitted,

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APPENDIX A.

Appellants in their brief to this Court stated that the results of the Georgia Democratic Primary held on September 12, 1962, would not have been different had the county unit system been in force (Appellants' brief, p. 10). From the numerical correctness of this fact, appellants draw certain inferences (Appellants' brief, pp. 52-53) which we respectfully submit, although substantially irrelevant to the issues in this case, are incorrect. Appellants' inference that there would have been no difference in the outcome of the primary had the unit system been in force totally ignores the impact that was had upon the election resulting from the absence of the unit system.

In three specific areas this impact was immeasurable:

1. Increasing voter registration and participation in urban areas;
2. Encouraging the candidacy of persons who would not have otherwise offered for public office; and
3. Altering the campaign tactics and approaches of candidates for state wide offices.

The foregoing propositions are demonstrated by the following excerpts from the Atlanta Journal and Constitution for the dates indicated. This does not purport to be an exhaustive summary of press reaction but is shown merely to illustrate the fallaciousness of any inference drawn merely from the results of the primary which does not take into account the pervading effect resulting from the fact that Georgia voters on September 12, 1962, participated in the first popular vote primary in five decades.

May 2, 1962, Atlanta **Constitution**, headline:

"CITY VOTERS FLOCK TO REGISTER."

September 11, 1962, Atlanta **Journal**, in an article headlined "A RECORD TURNOUT OF VOTERS IS FORECAST":

"State Democratic Party Secretary George D. Stewart predicted a record turnout of 850,000 votes because of metropolitan area voters taking full advantage of the equal vote they are casting for the first time in a half-century."

September 13, 1962, Atlanta **Journal**, under headline "CITIES FURNISH THE WHEELS FOR SANDERS' BANDWAGON":

"Georgia cities put the wheels on Carl Sanders' gubernatorial bandwagon.

"Urban voters broke records right and left."

May 6, 1962, Atlanta **Constitution**, Editorial entitled "New Political Vigor":

"The closing of the list for the State Democratic Primary launches Georgia on one of the most interesting and vigorous political campaigns in years. The setback given the archaic and unfair old county unit system by the courts brought new faces, new blood and maybe even new ideas to the big state races . . .

"The result has been a wonderfully revised interest in politics and state government by both candidates and voters . . .

"But there's new life in Georgia this year, new faces in politics and new voters registered in hopes of a fair deal."

August 12, 1962, Atlanta **Constitution**, under headline "POLITICIANS PURSUE CITY DWELLER VOTES":

"Under an August half-moon Saturday night, hundreds of Atlanta area residents watched a sight practically unknown in their lifetime—state politicians soliciting their votes.

"City dwellers often seem somewhat bemused and bewildered by their new-found popularity with state office seekers addressing them in the time-honored political phrase 'My fellow Georgians.'"

May 13, 1962, Atlanta Constitution, feature article under the heading "EVOLUTION NOT REVOLUTION":

"The shift in power has brought major changes to the state's political pageant now beginning for the fall elections:

"The five largest cities in Georgia all have candidates for major state office for the first time in many years.

"Suburban voters suddenly find themselves a prominent factor in politics.

"The clearest example is State Sen. Carl Sanders, a candidate for governor who many city voters think will win now, even though he might not have entered the race under the old 410-county unit system."

September 26, 1962, Atlanta Journal, editorial column of Eugene Patterson, regarding the campaign approach of the victorious candidate for Lieutenant Governor in a run-off election*:

"A few hours after the first popular vote within most Georgians' memory was counted, the demagoging politician of county unit system days was gone.

* The candidate in question would have been elected in the September 12 primary under the county unit system but was thrown into a run-off on a popular vote basis.

“True, he was replaced the next day by a fellow who looked just like him, and bore the same name, and possessed the same record, and undoubtedly held the same ideas as strongly as he had ever held them. But he didn’t talk the same.

“His bawl had moderated to a gentle benediction on the brotherhood of man; his unacceptably vulgar vocabulary had become the reasoned utterance of a gentleman. . . .”

The foregoing is but a brief sample of press reaction during the period commencing with the panel court’s decision until after the conclusion of the Democratic primary.

It is respectfully submitted that it clearly rebuts the suggested inference that there was no difference, because in fact there was indeed a difference.

Proof of Service.

I, Morris B. Abram, one of the attorneys for James O’Hear Sanders, Appellee herein, and a member of the bar of the Supreme Court of the United States, hereby certify that, on the . . . day of December, 1962, I served copies of the foregoing Brief on the several parties thereto, as follows:

On James H. Gray and George D. Stewart, as Chairman and Secretary, respectively, of the Georgia State Democratic Executive Committee, on the Georgia State Democratic Executive Committee, on the Georgia State Democratic Party, and on Honorable Ben W. Fortson, Jr., Secretary of State of the State of Georgia, by mailing copies in duly addressed envelopes, with first class postage prepaid, to their respective attorneys of record as follows:

To Lamar W. Sizemore, Esq., 715 C. & S. National Bank Building, Atlanta, Georgia, attorney for all defendants except Ben W. Fortson, Jr.

To Honorable Eugene Cook, the Attorney General, Judicial Building, Capitol Square, Atlanta, Georgia, B. D. Murphy, Esq., C. & S. National Bank Building, Atlanta, Georgia, and E. Freeman Leverett, Esq., Elberton, Georgia, attorneys for Ben W. Fortson, Jr., Secretary of State of the State of Georgia.

.....
Attorney for James O'Hear Sanders.

1504 Healey Building,
Atlanta, Georgia.

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In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 112

JAMES H. GRAY, ET AL., APPELLANTS

v.

JAMES O'HEAR SANDERS

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF GEORGIA*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The opinion of the three-judge district court (R. 182) is reported at 203 F. Supp. 158.

JURISDICTION

The order of the three-judge district court was entered on April 28, 1962 (R. 204-205). The notice of appeal to this Court was filed on May 2, 1962 (R. 205), and probable jurisdiction was noted on June 18, 1962 (370 U.S. 921; R. 213). The jurisdiction of this Court rests on 28 U.S.C. 1253.

QUESTIONS PRESENTED

1. Whether a state law which requires that primary elections for Governor, Senator, and other statewide

officials be conducted under a county unit plan that grossly and systematically dilutes the votes of residents of populous counties violates the equal protection or due process clause of the Fourteenth Amendment.

2. Whether such gross and systematic discrimination is unconstitutional in primary elections conducted pursuant to a rule of a political party where such primaries are closely regulated by state law and, in practice, finally determine the selection of all statewide officeholders.¹

STATUTES INVOLVED

Sections 34-3212 to 34-3218, Georgia Code Annotated, as amended by the Act of April 27, 1962 (Ga. Laws, 1962 Ex. Sess., p. 1217), are set forth in Appendix A.

INTEREST OF THE UNITED STATES

On March 26, 1962, this Court decided *Baker v. Carr*, 369 U.S. 186, which held that the federal courts have jurisdiction to consider whether arbi-

¹ We do not discuss three other issues which are involved in this case: (1) whether, as the district court held, the Georgia county unit system would be valid if it did not result in inequality greater than that in the electoral college or under the "equal proportions" system for representation of the States in Congress (see *infra*, pp. 61-63); (2) whether the county unit system as such, regardless of the inequality under it, violates the Fourteenth Amendment; and (3) whether the Seventeenth Amendment prohibits use of any county unit system in the election of Senators. We do not believe these questions need be reached by this Court since the Georgia county unit system for the election of Senators and other statewide officials, as it in fact exists, violates the Fourteenth Amendment.

trary apportionment of state legislatures violates the Fourteenth Amendment; that this issue is not a non-justiciable political question; and that voters who have suffered discrimination have standing to bring such an action. The United States participated in that case as *amicus curiae* because of the far-reaching issues presented. The decision in *Baker v. Carr* has resulted in a large amount of litigation in federal and state courts,² of which the present case is the first to reach this Court.

The principal constitutional issue in this case is whether Georgia's statute, which allocates much greater weight to some votes than to others in tabulating the results of primary elections involving the United States Senate and other statewide offices, is consistent with the Fourteenth Amendment. The other, closely related, constitutional issue is whether a political party, by party rule, may adopt this course when the primary election is closely regulated by state law and is the only meaningful election.

These are fundamental questions concerning the power of a State and political party to make distinctions among voters casting ballots in the same election. In addition, they bear upon the distinct, but related, problem of the standards which should govern in determining whether the malapportionment of seats in legislative bodies is valid under the Four-

²Cases involving the problem of geographical discrimination in the apportionment of seats in state legislatures which have been decided since *Baker v. Carr* are collected in *Court Decisions on Apportionment*, issued by the National Municipal League. Three volumes have been published to date.

teenth Amendment. Thus, this case involves issues of great importance to millions of American citizens seeking full and fair participation in their federal and state governments.

STATEMENT

1. *The Complaint and the District Court Proceedings.*—This action was brought on March 27, 1962, in the United States District Court for the Northern District of Georgia, Atlanta Division, by the appellee, a citizen of the United States and the State of Georgia, who is also a resident of Fulton County, Georgia, a member of the Democratic Party of Georgia, and a person qualified to vote in primary and general elections in Fulton County (R. 1-3). The defendants (appellants here) were the Chairman and Secretary of the Georgia State Democratic Executive Committee and the Secretary of the State of Georgia in their representative capacities; the Georgia State Democratic Executive Committee; and the Georgia State Democratic Party (R. 2-3). The complaint asserted rights under 42 U.S.C. 1983 (which provides for suits in equity or other proper proceedings to redress deprivations of federal constitutional rights under color of state authority) and claimed that the district court had jurisdiction under 28 U.S.C. 1343 (R. 1).

The complaint alleged that the defendant Democratic Party was planning to hold a statewide primary election in Georgia on September 12, 1962, for nomination of candidates for the United States Senate and the state offices of Governor, Lieutenant Gov-

ernor, Secretary of State, Justice of the Supreme Court, Judge of the Court of Appeals, Attorney General, Comptroller General, Commissioner of Labor, and Treasurer (R. 4). It was further stated that the method of tabulating the votes to be cast in the September 12, 1962, election—the so-called county unit system—had been enacted in the Neill Primary Act of 1917 (Georgia Laws 1917, pp. 183-189, codified as Ga. Code Ann. 34-3212 to 34-3218). The Act *required*, as to statewide primaries conducted by any political party, that:

Candidates for nominations to above named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. * * *

* * * the majority of the county unit vote shall be the determining factor for the nomination of United States Senator and Governor and * * * the plurality of the county unit vote shall be the determining factor for the nomination to all other offices named in [Section 34-3212].

The complaint noted that Article III, Section III, paragraph I, of the Georgia Constitution of 1945 established the composition of the lower House of the General Assembly as follows (R. 6):

The House of Representatives shall consist of representatives apportioned among the several

counties of the State as follows: To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each.

Appellee asserted that the total population of Georgia in 1960 was 3,943,116; that the population of Fulton County, where he resided, was 556,326; that the residents of Fulton County comprised 14.11 percent of Georgia's total population (R. 6); but that, under the county unit system, the six unit votes of Fulton County constituted 1.46 percent of the total of 410 unit votes, or one-tenth of Fulton County's percentage of statewide population (R. 7). The complaint further alleged that Echols County, the least populous county in Georgia, had a population in 1960 of 1,876, or .05 percent of the State's population, but the unit vote of Echols County was .48 percent of the total unit vote of all counties in Georgia, or ten times Echols County's statewide percentage of population (R. 7). One unit vote in Echols County represented 938 residents, whereas one unit vote in Fulton County represented 92,721 residents. Thus, one resident in Echols County had an influence in the nomination of candidates equivalent to 99 residents of Fulton County (R. 7).

The complaint urged that the provisions of Sections 34-3212 to 34-3218 of the Georgia Code, governing the counting, tabulation, and consolidation of votes cast in primary elections on the county unit basis, and requiring the certification and publication of the

names of persons deemed nominees on the basis of the county unit system, violated the equal protection and due process clauses of the Fourteenth Amendment and, insofar as they relate to the election of United States Senators, the Seventeenth Amendment (R. 10-11). More specifically, the complaint alleged that the county unit system deprived the complainant of equal protection by virtue of the disparity it created between the weight and influence of the vote of appellee, as a resident of Fulton County, and the votes of others throughout Georgia (R. 10). It asserted that Sections 34-3212 to 34-3218 created "arbitrary and unconstitutional classifications among voters of the State based solely upon geographic location of residents and character of domicile (i.e., urban or rural) * * *" (R. 11). The complaint further stated that the due process clause was violated because "the dilution, diminution and abridgement of, plaintiff's vote and of his right to vote constitut[ed] deprivation of plaintiff's liberty and property * * *" (R. 11). The election of Senators by the county unit system, the complaint said, violated the Seventeenth Amendment guaranty that Senators from each State shall be "elected by the people thereof" (R. 11).

Appellee claimed further that he was without adequate remedy at law, inasmuch as the Supreme Court of Georgia, in *Cox v. Peters*, 208 Ga. 498, 67 S.E. 2d 579, appeal dismissed, 342 U.S. 936, had held that an action for damages would not lie in favor of one aggrieved by reason of the county unit system (R. 12). He prayed that a three-judge court be con-

vened (R. 13), and that the court issue a declaratory judgment holding Sections 34-3212 to 34-3218 unconstitutional insofar as they provided for the nomination by the defendant Democratic Party of any candidate for United States Senator or statewide office under the county unit system (R. 14). The complaint went on to request that the Democratic Party, the Chairman and Secretary of the Georgia State Democratic Executive Committee, and their successors in office, be restrained (1) from conducting elections under the county unit system; (2) from tabulating and consolidating ballots cast in the Democratic primary election to be held on September 12, 1962, and in any other primary election conducted by that Party on the basis of that system; (3) from selecting any nominee on the basis of ballots cast in any primary election held in accordance with that system; (4) from publishing or certifying the nomination of any candidate for United States Senator or other statewide office so selected; and (5) from giving any force and effect to the county unit system as it was established under the Neill Primary Act (R. 13). Finally, appellee asked that the Secretary of the State of Georgia, and his successors in office, be restrained from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide office who might be nominated in any primary held by the Democratic Party under the county unit system, and from furnishing to the several ordinaries official ballots and election supplies which recognized nomination under the county unit system (R. 13-14).

On April 2, 1962, a three-judge court was convened, consisting of Chief Judge Tuttle and Judge Bell of the Court of Appeals for the Fifth Circuit, and Judge Hooper, District Judge for the Northern District of Georgia (R. 39). On April 25, 1962, appellants moved to dismiss the complaint. Together with their motion to dismiss, appellants filed an answer in which they denied that the challenged statutes were "arbitrary, discriminatory or unconstitutional for any reason" (R. 67). The answer set forth a history of the county unit system (R. 69-72),³ and stated that "the county unit method of nominating candidates in primary elections is reasonably designed to give recognition to the pattern of state organization on a county unit basis, and to achieve a reasonable balance as between urban and rural electoral power" (R. 73).

At the hearing before the three-judge court upon appellee's application for an interlocutory injunction, appellee introduced several affidavits.⁴ One of these was executed by James C. Bonner, Professor of History at the Woman's College of Milledgeville, Georgia, who recounted the history of the Georgia county unit system. He detailed the population growth of Atlanta, which had received no corresponding adjustment in unit votes (R. 104), the steady growth in disparity of voting strength as between the most and

³ In Appendix B to this brief (pp. 72-80), we describe the history of the present county unit system and of the litigation involving it.

⁴ Appellants introduced no testimony and but a single exhibit: a tabulation of the returns of the 1960 general election (R. 179).

least populous counties (R. 113), and the relationship of the county unit system to rural antagonism toward urban centers. He noted that there had been one instance in Georgia where a candidate had won the Democratic Party's gubernatorial nomination by the county unit vote although he did not receive a majority of the popular vote (R. 111, 113).

The affidavit of former Mayor William B. Hartsfield of Atlanta described how the county unit system discouraged citizens in populous counties from participating in nominations for statewide offices; how it reduced the opportunity of citizens of Fulton County to obtain such nominations; and how candidates were encouraged to vilify the major population centers in order to gain unit votes in the less populous counties (R. 122-126).

An affidavit of Phillip Hammer, an economist concerned with the economics of urban and metropolitan area growth, stated that the county unit system produced a sharp disparity in Georgia between political control and relative economic development since the heavily populated and growing counties received a disproportionately small proportion of the unit votes (R. 155-159).

Two affidavits of Leslie J. Gaylord, assistant professor of mathematics at Agnes Scott College, Decatur, Georgia (R. 84-89, 126-131), discussed a so-called "547 unit proposal" then under consideration by the Georgia legislature (R. 127).^{*} One of these

^{*} This proposal was subsequently enacted by the legislature, and then held unconstitutional by the three-judge district court in the decision under review here see *infra*, pp. 13-16.

showed that, under the 547-unit proposal, a majority (50.4 percent) of the population of voting age would have only 31.1 percent of the total units (R. 128), and that, in a two-man race, 15.4 percent of the voters could elect a candidate, in a three-man race, 10.2 percent, in a four-man race, 7.7 percent, and in a five-man race, 6.1 percent (R. 128).*

On the same day as the hearing, April 27, 1962, the Georgia legislature enacted, and the Governor approved, an amendment to the statutes challenged by the complaint (Ga. Laws, 1962 Ex. Sess., p. 1217); see Appendix A, *infra* pp. 65-19. The amendment—the 547 unit vote proposal—modified the county unit system by allocating units to counties in accordance with a “bracket system” instead of doubling the number of representatives of each county in the lower house of the Georgia Assembly. Counties with from 0 to 15,000 people were allotted two units; an additional one unit was allotted for the next 5,000 person; an additional unit for the next 10,000 persons; another unit for the next 15,000 persons; and, thereafter, two more units for each increase of 30,000 persons. Under the 1962 Act, a candidate in order to receive a county’s unit votes is required to receive a majority of the popular votes in the county, not just a plurality; all candidates for statewide

* Several of the affidavits filed by appellee noted that there was a relationship between the county unit system and Negro disfranchisement, *i.e.*, that Negro registration was generally low in those areas where the county unit system accorded relatively high voting power, and high in areas where the vote counted for less (R. 85; see also R. 91-92).

office (not merely for Senator and Governor as under the Neill Primary Act) are required to receive a majority of the county unit votes to be entitled to nomination in the first primary. In addition, in order to be elected in the first primary, a candidate has to receive a majority of the popular votes. If no candidate receives both a majority of the unit votes and a majority of the popular votes, a second run-off primary is required between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes. In the second primary, the candidate receiving the highest number of unit votes is to prevail.

On the same day as the 1962 Act was passed, appellee filed a motion to amend his complaint, which was immediately granted in open court (R. 79). As amended, the complaint alleged that the 1962 Act violated "the Fourteenth and Seventeenth Amendments to the Constitution of the United States in the manner previously set forth" in the original complaint (R. 80). It prayed that the court declare the Neill Primary Act, as amended on April 27, 1962, unconstitutional insofar as it provided for the nomination by the Democratic Party of any candidate for United States Senator or other statewide office under any "County Unit" or "Geographical Unit" system whereby individual votes cast were consolidated by geographical groupings and assigned values other than one unit for each popular vote cast. The amended complaint requested injunctive relief restraining the conduct of the September 12, 1962, pri-

mary, and "any primary election hereafter conducted" by the Democratic Party, on any basis other than by popular vote whereby each individual vote cast was given equal weight with every other vote cast (R. 79-81).

2. *The Decision of the District Court.*—On April 28, 1962, the district court, relying on *Baker v. Carr*, 369 U.S. 186, held that it had jurisdiction; that a justiciable cause of action was stated; and that appellee had standing to maintain the suit (R. 195-198). The court cited *Chapman v. King*, 154 F. 2d 460 (C.A. 5), certiorari denied, 327 U.S. 800, for the proposition that the Democratic primary in Georgia is state action, and therefore concluded that the Fourteenth Amendment extends to a deprivation of equal protection occurring in such an election (R. 196-197). Stressing the point that it was ruling on an application for a temporary injunction, the court said that it was necessary to rule on the injunction before a final hearing on the merits could be held because time was of the essence (R. 198).

The court then considered the question whether the Neill Primary Act, as amended, violated appellee's right to equal protection of the laws. It reasoned that the claim of "invidious discrimination" was to be adjudicated in the light of all "relevant factors" (R. 199), including (1) the "rationality of state policy"; (2) whether or not the system was arbitrary; and (3) whether or not the system had "a historical basis in our political institutions, both federal and state" (R. 199-200). In addition, the court said that, at

least in determining whether it should intervene, consideration should be given to the presence or absence of a political remedy and the delicate relationship between the federal and state governments under the Constitution (R. 201).'

Applying these criteria, the court concluded that a county unit system, as such, did not violate the federal Constitution, "assuming rationality and absence of arbitrariness in end result" (R. 201). Nonetheless, the court found that Georgia's system did violate the equal protection clause (R. 201-202):

The system as it existed prior to yesterday was violative of the right of plaintiff to the equal protection of the laws. The system as it exists today is an improvement * * *. But even the new system misses the mark in two respects: first in failing to accord the unit of plaintiff a reasonable proportion of the whole, and second in failing to accord the units representing a majority of the population a reasonable proportion of the whole.*

'The court concluded that there was no likelihood that the appellee could obtain relief through a political remedy (R. 201).

*In support of this conclusion, the court included a table covering the four most populous and least populous counties of Georgia (R. 202):

| "County number | Name | Population | Number unit votes | Population per unit vote | Ratio to Fulton County |
|----------------|----------------|------------|-------------------|--------------------------|------------------------|
| 1 | Fulton..... | 556,326 | 40 | 13,908 | |
| 2 | DeKalb..... | 256,782 | 20 | 12,839 | |
| 3 | Chatham..... | 188,299 | 16 | 11,760 | |
| 4 | Muscogee..... | 158,623 | 14 | 11,330 | |
| 156 | Webster..... | 3,247 | 2 | 1,623 | 8 to 1 |
| 157 | Glasseock..... | 2,672 | 2 | 1,336 | 10 to 1 |
| 158 | Quitman..... | 2,432 | 2 | 1,216 | 11 to 1 |
| 159 | Echols..... | 1,876 | 2 | 938 | 14 to 1 |

"There are 97 two-unit counties, totalling 194 unit votes, and

The court also laid down the following standard for determining the validity of a county unit system (R. 202-203):

[A] unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the whole vote for electors of the party in a recent presidential election; provided no discrimination is deemed to be invidious under the system if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress, and provided it is adjusted to accord with changes in the basis at least once in each ten years.

Its interlocutory injunction enjoins the appellants, until further order of the court, from applying the county unit system, pursuant either to a state statute or party rule, if the allocation of units fails to meet the prescribed standard (R. 204-205).

22 counties totalling 66 unit votes, altogether 260 unit votes, within 14 of a majority; but no county in the above has as much as 20,000 population. The remaining 40 counties range in population from 20,481 to 556,326, but they control altogether only 287 county unit votes. Combination of the units from the counties having the smallest population gives counties having population of one-third of the total in the state a clear majority of county units."

INTRODUCTION AND SUMMARY OF ARGUMENT

The jurisdiction of the district court, the justiciability of the issues, and appellee's standing to maintain the action are all established by the decision in *Baker v. Carr*, 369 U.S. 186. It is also plain that the action of the district court was not premature. Accordingly, the case brings before the Court, for the first time on the merits, this question: What substantive limitations, if any, does the Fourteenth Amendment place upon the electoral processes of the States? More precisely, the issue is whether an electoral system that systematically and severely discriminates against voters in populous counties in the selection of statewide officials violates the equal protection or due process clauses of the Fourteenth Amendment.

The right to be free from hostile or capricious discrimination in defining the class of persons entitled to vote is now well-established. The same safeguards should be held to protect the qualified voter against hostile or capricious dilution of the value of his franchise. The need for protection against fundamental unfairness in the electoral process is at least as great as in dealing with regulatory legislation and criminal laws. Nor is the process of adjudication more difficult. The problems lend themselves to rational analysis. Those who demand precise standards for exact mathematical measurement of every electoral system or method of apportionment forget that neither the equal protection nor due process clause has ever been reduced to a mechanical yardstick. The answers must be found in case-by-case adjudication based upon constitutional practice, history, analogy to past adjudi-

cations, and an appreciation of the long-range ideals at the base of our civil and political institutions. By way of illustration and without seeking to foresee other questions, we suggest two principles that would condemn many flagrant injustices.

First, any apportionment or electoral system which produces utterly capricious divergencies in voting power, defying any intelligible explanation, violates the Fourteenth Amendment. See, *e.g.*, *Baker v. Carr*, 369 U.S. 186, 251, 258 (Mr. Justice Clark concurring); *Baker v. Carr*, 206 F. Supp. 341 (M.D. Tenn.) (after remand).

Second, any apportionment or electoral system that imposes an extreme and invidious discrimination against a particular class of voters, without any objective or justification which is relevant to the purposes of the legislative or electoral process, also violates the equal protection and due process clauses of the Fourteenth Amendment. Cf., *Gomillion v. Lightfoot*, 364 U.S. 339.

The latter principle is applicable to the present case. Unlike the crazy-quilt that may result when an apportionment is left unchanged for decades, the 1962 Georgia statute proceeds upon an intelligible plan—it systematically and grossly discriminates against voters in the larger and more populous counties in the election of statewide officials. The unit voting plan permits the voters of rural counties containing less than one third of the people of Georgia to determine the election of the Governor, Senators, and other statewide officials. The votes of citizens in the eleven smallest counties are accorded, on the average, seven

and one-half times the weight of votes in the four largest counties.

This gross and systematic discrimination against urban and suburban voters cannot be justified as a measure reasonably adapted to carrying out a permissible objective of the State's electoral process. A man's residence or the number of his neighbors bears no more relation to his entitlement to vote than his wealth bears to his right to a fair appeal from a criminal conviction (see *Griffin v. Illinois*, 351 U.S. 12) or his race to his right to public education (see *Brown v. Board of Education*, 347 U.S. 483). The egregious dilution of urban and suburban votes in a statewide election is unnecessary to secure geographical distribution or to reflect the political integrity of historic governmental subdivisions.

Appellants seek to justify the preferential treatment of the rural minority—or, to put it another way, the hostile discrimination against the urban and suburban majority—on the ground that urban voters have more favorable opportunities for concerted group action and tend to regiment their power along the lines of group interests. A sufficient answer is that there is not the slightest evidence to support these factual assumptions. The fundamental answer is that our basic democratic ideals forbid the notion that any particular "community of interest" should be accorded greater voting strength than the number of the people comprising the community warrants. This is true whether the favored group be a rural minority, members of labor unions, businessmen, Catholics, Negroes, elderly persons, or suburbanites. If the State has

power arbitrarily to enhance the voting power of one group, it has equal power to repress the same group or any other. Such measures, we submit, are the very essence of the arbitrariness that both equal protection and due process prohibit.

In the concluding sections of this brief, we show that the foregoing principles apply to the use of Georgia's county unit system in the Democratic primary even though it be conducted according to party rules instead of statutes. We then suggest that the Court should delete those portions of the decree below which in effect give advice as to the kinds of unit systems that the Constitution permits and prohibits. Adjudication of the constitutionality of any state statute or party rule, other than those now before the Court, should await the action of the state authorities.

ARGUMENT

I

THE CONSTITUTIONAL ISSUES ARE PROPERLY BEFORE THE COURT FOR DECISION ON THE MERITS

A. THE DISTRICT COURT HAD JURISDICTION OF THE SUBJECT MATTER

Section 1343 of Title 28 U.S.C. provides that "[t]he district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person * * * [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States * * *." Section 1983 of Title 42 U.S.C. provides that "[e]very person who, under color of any

statute, ordinance, regulation, custom, or usage, of any State * * * subjects, or causes to be subjected, any citizen of the United States * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." In *Baker v. Carr*, 369 U.S. 186, the complaint alleged that malapportionment of seats in the Tennessee legislature deprived the plaintiffs—citizens residing in areas alleged to be underrepresented—of equal protection of the laws and due process under the Fourteenth Amendment. This Court held that such an allegation provided the necessary basis for federal jurisdiction under 28 U.S.C. 1343 and 42 U.S.C. 1983.

In this case, the plaintiff likewise brought suit under 28 U.S.C. 1343 and 42 U.S.C. 1983. He alleged that the Georgia county unit system violates the equal protection and due process clauses of the Fourteenth Amendment because of the disparity which it creates between the weight and influence of the plaintiff's vote and the weight and influence of the votes of others in Georgia. Thus, the claim in this case closely resembles the claim for relief involved in *Baker v. Carr*. The difference between a Fourteenth Amendment claim arising out of the malapportionment of seats in a legislative body and claims of denial of equal protection and due process based on the improper weighting of votes in the election of statewide officials is plainly immaterial for purposes of subject-matter jurisdiction.

We discuss below (pp. 26-61) our contention that the Georgia county unit system is unconstitutional. It is sufficient at this point to say that this discussion shows clearly that the issue is not "so patently without merit as to justify * * * dismissal for want of jurisdiction." *Bell v. Hood*, 327 U.S. 678, 683; see *Hart v. Keith Vaudeville Exchange*, 262 U.S. 271, 274; *Newburyport Water Co. v. Newburyport*, 193 U.S. 561, 579. Indeed, the substantiality of the issue in this case is also demonstrated by the determination in *Baker v. Carr* that the issue there was not "unsubstantial and frivolous." 369 U.S. at 199. If the claim in *Baker v. Carr* was not so insubstantial as to warrant dismissal for lack of jurisdiction, the same is surely the case here.⁹

B. THE CONTROVERSY IS JUSTICIABLE

In *Baker v. Carr*, the Court rejected the contention that the voter's claim under the Fourteenth Amendment presented a non-justiciable "political question." 369 U.S. at 209. The Court found that malapportionment cases do not share characteristics involved in cases presenting non-justiciable "political questions"—for example, questions concerning our foreign

⁹ That the Fourteenth and Seventeenth Amendment claims are substantial enough to withstand dismissal for lack of jurisdiction is also indicated by the fact that in *South v. Peters*, 339 U.S. 276, 277, Justices Black and Douglas, who alone considered the merits, stated that the Georgia county unit system violated these constitutional provisions. See also the dissenting opinion of Judge Andrews in *South v. Peters*, 89 F. Supp. 672, 683 (N.D. Ga.). Cf. *Gates v. Lorz*, 172 Tenn. 471, 113 S.W. 2d 388.

relations, those to be decided by a political branch co-equal with the judiciary, and those for which judicially manageable standards are lacking. Instead, the Court said that "Judicial standards under the Equal Protection Clause are well developed and familiar." 369 U.S. at 226. Since the issues in this case are closely similar to those in *Baker v. Carr*, the claim here is also justiciable. Moreover, insofar as this case involves elections for United States Senator, this Court noted in *Baker v. Carr* that previous decisions had "settled the issue in favor of justiciability of questions of congressional redistricting." 369 U.S. at 232.¹⁰

C. APPELLEES HAVE STANDING TO MAINTAIN THE ACTION

Baker v. Carr also demonstrates that appellee has standing to maintain this suit. Appellee has alleged that he is a citizen of the United States and Georgia and is a resident of Fulton County; that he is a mem-

¹⁰ The Court cited *Smiley v. Holm*, 285 U.S. 355, *Koenig v. Flynn*, 285 U.S. 375, and *Carroll v. Becker*, 285 U.S. 380. The Court pointed out that *Colegrove v. Green*, 328 U.S. 549, was not to the contrary, for "the refusal to award relief in *Colegrove* resulted only from the controlling view of a want of equity." 369 U.S. at 234. The "controlling view" in *Colegrove* was that of Mr. Justice Rutledge, who voted to affirm the dismissal of the complaint despite his conclusion that a justiciable issue was presented. He stated that "The shortness of the time remaining [before the forthcoming elections] makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek. * * * I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed and I join in that disposition of the cause." 328 U.S. at 565-566.

ber of the Democratic Party of Georgia; that he is qualified to vote in primary and general elections in Fulton County (R. 2, 3); and that he is injured by the disparity which the county unit system creates between the weight and influence of his vote, as a resident of Fulton County, and the votes of other residents throughout Georgia (R. 10). Here, as in *Baker v. Carr*, the injury which appellee asserts is that the State discriminates against the voters in the county in which he resides, "placing them in a position of constitutionally unjustifiable inequality *vis-a-vis* voters in irrationally favored counties." 369 U.S. at 207-208. Appellee, like the appellants in *Baker v. Carr*, has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." 369 U.S. at 204. See also *Colegrove v. Green*, 328 U.S. 549; *South v. Peters*, 339 U.S. 276; *Smiley v. Holm*, 285 U.S. 355, 361; *Koenig v. Flynn*, 285 U.S. 375, 379; *Wood v. Broom*, 287 U.S. 1, 4; *Coleman v. Miller*, 307 U.S. 433, 438.

D. THE DISTRICT COURT'S RULING WAS NOT PREMATURE

Although the original complaint in this action attacked the validity of the Neill Primary Act of 1917, during the course of the hearing before the three-judge court the state legislature amended that Act. The complaint was accordingly amended to seek relief against the new statute, and the district court ultimately declared invalid and enjoined the enforcement

of the 1962 amendment.¹¹ Appellants argue (Br. 52-53) that, upon being advised of the enactment of the 1962 amendment, the district court should have dismissed the complaint on the ground that the constitutionality of legislation should not be determined in advance of its adverse effect in a concrete case. They note that, as a matter of fact, the results of the 1962 primary—conducted on a popular vote basis because of the district court's decision in this case—would have been the same under the 1962 Act. Thus, appellants are apparently contending that appellee could challenge the 1962 Act only after the 1962 election had occurred.

There can be no doubt that a genuine controversy was presented in this case. If the district court had not acted, the 1962 primary elections would have been conducted by the Democratic Party on a basis which appellee contends, and the district court held, deprived appellee of his constitutional rights. Moreover, if the district court could not properly act, as appellants argue, the constitutionality of conducting the 1962 primary under the 1962 amendment could never have been challenged. A complaint attacking the application of a county unit system to a primary election which is filed after the election is held, is subject to dismissal for want of equity. See, e.g., *Turman v. Duckworth*, 68 F. Supp. 744 (N.D. Ga.), appeal dismissed, 329 U.S. 675; *Cook v. Fortson*, 68 F. Supp. 624 (N.D. Ga.),

¹¹ Although the Act which the court invalidated was enacted on the day preceding the decision, the passage of the Act had been anticipated, and, indeed, had been the subject of affidavits and exhibits filed by appellee (see R. 84-89, 126-131, 143).

appeal dismissed, 329 U.S. 675. Surely, it was not premature for the district court to decide the case when this was the only way that appellee could be protected against irreparable harm.

On the other hand, as appellants concede (Br. 11), this case is not rendered moot by the fact that the State Democratic Committee, on June 27, 1962, voted to hold the September 12, 1962, primary on a popular vote basis. *New York Times*, June 28, 1962, p. 29. The Democratic Committee was able to act as it did only because of the district court decree invalidating the 1962 Act and thus relieving the Democratic Committee of the obligation of conducting the primary pursuant to that Act. If the case were remanded for dismissal of the complaint as moot, the Party would be compelled to follow, in future elections, the procedures prescribed by the 1962 Act, which would remain valid. See *United States v. Mun-singwear*, 340 U.S. 36, 39. Moreover, the amended complaint requested, and the district court's decree granted, relief enjoining the Democratic Party from holding any primary election on the basis of a county unit system unless it met standards far stricter than the 1962 Act or the Party's own rules. The abandonment of the practices complained of for one election, particularly under compulsion of a court decree, does not render moot the question of the validity of such practices as applied to future elections. See *United States v. Trans-Missouri Freight Association*, 166 U.S. 290; *United States v. W. T. Grant Co.*, 345 U.S. 629, 632-633; *Carpenters Union v. Labor Board*, 341 U.S. 707-715.

II

THE EXTREME AND INVIDIOUS DISCRIMINATION AGAINST
VOTERS IN POPULOUS DISTRICTS UNDER GEORGIA'S
COUNTY UNIT SYSTEM FOR CHOOSING CANDIDATES FOR
STATEWIDE OFFICE VIOLATES THE FOURTEENTH AMEND-
MENT

Preliminarily, we point out that the Court has never ruled upon the constitutionality of Georgia's county unit system as applied to either elections or legislative representation. *South v. Peters*, 339 U.S. 276, was not, contrary to appellants' position, a ruling on the merits. The case involved a predecessor of the county unit system involved in this case, which was even more discriminatory against voters in populous counties. The Court's ruling was embodied in a single sentence (339 U.S. at 277): "Federal courts consistently *refuse to exercise their equity powers* in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions" (emphasis added). It is clear, therefore, that this Court did not consider the constitutional merits of the Georgia county unit system but merely concluded that the case was not a proper one for the exercise of judicial power.¹² As the Court said in *Baker v. Carr*, 369 U.S. at 235: "*South v. Peters*, 339 U.S. 276, like *Colegrove* appears to be a refusal to exercise equity's powers * * *." Just as the refusal of the Court to exercise its equitable discretion

¹² The dissenting opinion of Mr. Justice Douglas, joined by Mr. Justice Black, did reach the merits and concluded that the Georgia county unit system was unconstitutional.

in *South v. Peters* was not dispositive of *Baker v. Carr*, it is not dispositive of the merits of this case.

Nor are the other cases involving the county unit system which have reached this Court controlling. In *Cook v. Fortson*, 329 U.S. 675, and *Turman v. Duckworth*, 329 U.S. 675, the Court dismissed the bills as moot. As the Court noted in *Baker v. Carr*, 369 U.S. at 235, problems of timing were critical in *Hartsfield v. Sloan*, 357 U.S. 916, where the Court denied mandamus in an action seeking to compel the convening of a three-judge court. Finally, the Court in *Cox v. Peters*, 342 U.S. 936, dismissed for want of a substantial federal question an appeal from a holding of a state court that primary elections involved no state action. 208 Ga. 498, 67 S.E. 2d 579. This determination has since lost its vitality, for in *Terry v. Adams*, 345 U.S. 461, this Court held that primary elections constitute state action and are therefore covered by the Fourteenth Amendment (see *infra*, pp. 58-59, and *Baker v. Carr*, 369 U.S. at 235).¹³

A. THE RIGHT OF A QUALIFIED VOTER TO BE FREE FROM A CAPRICIOUS OR UNREASONABLY DISCRIMINATORY DILUTION OF THE VALUE OF THE FRANCHISE IS SECURED BY THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT

Although *Baker v. Carr*, 369 U.S. 186, left open the question whether the Fourteenth Amendment imposes any substantive restrictions upon the power of a State to dilute the value of the franchise of qualified voters, the state and lower federal courts unani-

¹³ For a detailed history of the litigation involving the Georgia county unit system, see Appendix B, *infra*, pp. 77-80.

mously agree that arbitrary and capricious discrimination violates both the equal protection and due process clauses of the Fourteenth Amendment. *Baker v. Carr*, 206 F. Supp. 341 (M.D. Tenn.) (after remand by this Court); *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala.), pending on appeal *sub nom. Reynolds v. Simms*, No. 508, this Term; *Lisco v. McNichols*, 208 F. Supp. 471 (D. Colo.); *Sobel v. Adams*, 208 F. Supp. 316 (S.D. Fla.); *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga.); *Toombs v. Fortson*, N.D. Ga., decided September 5, 1962; *W.M.C.A., Inc. v. Simon*, 208 F. Supp. 368 (S.D. N.Y.), pending on appeal, No. 460, this Term; *Moss v. Burkhart*, 207 F. Supp. 885 (W.D. Okla.); *Mann v. Davis*, E.D. Va., decided November 28, 1962; *Wisconsin v. Zimmerman*, 209 F. Supp. 183 (W.D. Wis.); *Caesar v. Williams*, 371 P. 2d 241 (Idaho Sup. Ct.), petition for rehearing denied, 371 P. 2d 255; *Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 180 A. 2d 656, pending on appeal, No. 554, this Term; *Scholle v. Hare*, 367 Mich. 176, 116 N.W. 2d 350 (majority opinion and Justice Souris concurring), pending on appeal *sub. nom. Beadle v. Scholle*, No. 517, this Term); *Levitt v. Maynard*, 182 A. 2d 897 (N.H. Sup. Ct.); *Sweeney v. Notte*, 183 A. 2d 296 (R.I. Sup. Ct.); *Harris v. Shanahan*, District Court, Shawnee County, Kansas, decided May 31, 1962; *Harris v. Shanahan*, District Court, Shawnee County, Kansas, decided July 26, 1952; *Fortner v. Barnett*, No. 59,965, Chancery Court of the First Judicial District of Hinds County, Mississippi. See also *Asbury Park Press, Inc. v. Wooley*, 33 N.J. 1, 161 A. 2d 705.

We submit that this widespread acceptance of the view that the Fourteenth Amendment has substantive content as applied to the electoral process is plainly correct.

It is settled law that discrimination against voters on the basis of race violates the equal protection clause of the Fourteenth Amendment. *E.g.*, *Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; *Gomillion v. Lightfoot*, 364 U.S. 339. And, ever since the *Granger* cases (*Munn v. Illinois*, 94 U.S. 113), it has been clear that the constitutional guarantee is not confined to discrimination based on color, but extends to arbitrary and capricious action against other groups. Thus, it would obviously violate the equal protection clause for a State to deny the franchise to persons who had attended college or to women who bobbed their hair.

A geographical classification may likewise be so irrational as to violate the equal protection clause. No one would defend the constitutionality of giving one twenty-fifth of a vote to citizens in the eastern half of the State and one vote to those in the western half. The effect would be the same if a statute gave one vote in an electoral body to each of the populous counties in the eastern half and twenty-five votes to each of the sparsely populated counties in the west. Other statutes which arbitrarily provide equally disproportionate voting upon a geographical basis must be equally unconstitutional.

In other words, the Constitution does not distinguish between the denial of voting rights and the gross distortion of their weight, at least in the elec-

tion of a Governor, Senator, or other statewide official. This is no novel doctrine. In *United States v. Classic*, 313 U.S. 299, this Court held that a qualified voter had a constitutional right to have his vote counted in a primary election for the House of Representatives without dilution by fraudulent tabulation. Similarly, in *United States v. Saylor*, 322 U.S. 385, the Court ruled that a qualified voter had a constitutional right to have his vote counted in the election of a Senator without dilution by the stuffing of ballot boxes. In both cases, the essence of the wrong was the improper dilution of votes. Systematic legislative dilution based upon irrelevant circumstances is no less a violation of the basic guaranty. Cf. *Baker v. Carr*, 369 U.S. 186, 226. Mr. Justice Frankfurter appears to have acknowledged the principle in his dissenting opinion in *Baker v. Carr*, 369 U.S. at 300, where he distinguished between asking the Court to choose "among competing bases of representation" and "a case in which a State has, through a device however oblique and sophisticated, denied Negroes or Jews or redheaded persons a vote, or given them only a third or a sixth of a vote."

These illustrations exemplify, we believe, the acceptance of the principle that the Fourteenth Amendment imposes some general restrictions upon the power of a State to practice capricious or invidious discrimination in withholding the franchise or diluting citizens' votes. If a State may not resort to unreasonable and arbitrary classification in enacting legislation affecting the right of defendants to appeal or regulating economic and social interests, certainly

it may not constitutionally engage in capricious or invidious discrimination among citizens seeking to exercise the fundamental right to vote. For the right to vote goes to the heart of democratic government. In *United States v. Carolene Products Co.*, 304 U.S. 144, 152, note 4, Mr. Justice Stone raised the question "whether legislation which restricts those political processes which can be ordinarily expected to bring about repeal of undesirable legislation, is to be subjected to more exacting judicial scrutiny under the general prohibitions of the Fourteenth Amendment than are most other types of legislation." See also *Minersville School District v. Gobitis*, 310 U.S. 586, 599-600 (overruled on other grounds in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 642). Writing specifically of legislation affecting the right to vote, Judge Cooley stated (2 Cooley, *Constitutional Limitations* (8th ed., 1927), p. 1370):

All regulations of the elective franchise, however, must be reasonable, uniform and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void.

Arbitrary regulation of the right to vote, even more than restrictions upon freedom of communication, destroys the essential pre-conditions of alert democracy.¹⁴ Those who are denied the right to vote

¹⁴ The record in this case amply demonstrates that arbitrary regulation of the franchise vitiates the essential pre-conditions of democracy. Speaking of the county unit system as it had

or accorded a vote which is greatly diluted in strength cannot protect their franchise by voting. There is, therefore, special reason for the courts to exert their constitutional powers to vindicate those constitutional rights.

Once the general principle is established, the question becomes, by what standards should a State's action be judged. In approaching this critical question at least one putatively important distinction should be kept in mind—the difference between legislative apportionment and the election of a Governor, Senator, or other official holding statewide office. Since a legislature is representative, there may be room for choice among theories of representation—such as representation according to population, or towns or counties, or contribution to the cost of government—as long as there is no more than a modest departure from *per capita* equality. Within whatever unit of representation is established, however, each citizen casts an equal vote for his representatives. Criteria similar to those relating to the legislature may per-

existed prior to the 1962 amendment, William B. Hartsfield, the Mayor of Atlanta for twenty-four years, stated in an affidavit filed in this case that "potential voters, for example in the County of Fulton, knowing that their ballots cast in Fulton County are debased, frequently take the attitude that there is no use in registering and voting in primaries for state-wide offices"; that "the citizens of Fulton and other counties in which metropolitan centers are located in the State of Georgia [had] as a result of their residence, very little chance for nomination in state-wide primaries"; and that, for the purpose of gaining the unit votes of the smaller counties, candidates had subjected the citizens of Atlanta to vilification and abuse (R. 123, 125).

haps apply when a statewide official is not elected by direct voting but by a representative body, as was the early practice in the election of Governors in some States and the uniform practice in the election of United States Senators prior to the Seventeenth Amendment. In the direct election of statewide officials, however, the decision is made by voters, not by representatives, and there is no occasion for choosing between conflicting theories of representation. The elected official is chosen to represent all the citizens. The introduction of any unit system that weights the votes of the counties otherwise than by population becomes simply a method of diluting the value of some votes in favor of others.

The starting place in adjudicating the constitutionality of any legislative apportionment, and *a fortiori* of any electoral system, must be *per capita* equality of voting power. Political equality is one of the fundamental ideals of American life. Any serious departure from apportionment according to population (whether persons or qualified voters)—certainly any departure affecting the election of a statewide official—is subject to question, even if the divergence may ultimately be shown to have a rational justification.¹⁵ The extent to which the right of equal representation is ingrained in our constitutional system is evidenced by the fact that more than four-

¹⁵ Since exact numerical equality of population within legislative districts is impossible to achieve, all that the principle requires, in that context, is, "that equality in the representation of the state which an ordinary knowledge of its population and a sense of common justice would suggest." *Ragland v. Anderson*, 125 Ky. 141, 158, 100 S.W. 865, 869.

fifths of the state constitutions make apportionment according to population or qualified voters the basic principle for choosing at least one branch of the state legislature. Forty-seven States out of fifty grant numerical equality in the election of statewide officials. Only Mississippi and Maryland follow a unit system like Georgia's, and even in those cases there is no reason to believe that discrepancies from equality of voting is the result of systematic discrimination. While the President and Vice-President are chosen by an electoral college, we submit that it is not analogous to the electoral systems of the States and, moreover, it only modestly departs from *per capita* representation. See *infra*, p. 46.

Because the case does not present the issue, we pass the question whether the equal protection clause prohibits any discrimination in the electoral process, and possibly even in legislative representation. See *South v. Peters*, 339 U.S. 276, 279 (Justices Black and Douglas dissenting); *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala.); Larson, *Reapportionment and the Courts* (1962); Twentieth Century Fund, *One Man—One Vote, A Statement of Basic Principles of Legislative Apportionment* 1962).¹⁶ At the very least, the

¹⁶ We are not unmindful of the warning in *MacDougall v. Green*, 335 U.S. 281, 283, that "To assume that political power is a function exclusively of numbers is to disregard the practicalities of government." The Court there, in upholding a state statute requiring that nominees on the ticket of a new political party receive 200 signatures from 50 of the 102 counties, said that it was "allowable State policy to require that candidates for state-wide office should have support not limited to a concentrated locality." But this does not mean that, as in Georgia, the actual votes can be given different weight. See also *infra*, p. 47.

principle of equality incorporated in the equal protection clause means that the point of departure must be equal, or substantially equal, treatment of all voters. "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government." *South v. Peters*, 339 U.S. 276, 279 (Justices Black and Douglas dissenting). Once it appears that persons similarly circumstanced have been denied equality of voting rights the statute stands condemned unless the differentiation has a relevant and substantial justification.

There is no contradiction between this proposition and the settled rule that the burden of establishing the unconstitutionality of a statute rests upon him who assails it. *Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580, 584; see *Baker v. Carr*, 369 U.S. 186, 266 (Justice Stewart concurring). The complainant must show that he is indeed the victim of discrimination and that the only apparent bases for differentiation are invidious or capricious, but having gone so far, he is not compelled to demonstrate the absence of any imaginable foundation. "Discriminations are not to be supported by mere fanciful conjecture." *Hartford Steam Boiler Ins. Co. v. Harrison*, 301 U.S. 459, 462; *Borden's Farm Products Co. v. Baldwin*, 293 U.S. 194, 209. In the present context, a substantial departure from equality of treatment, without evident foundation, makes out at least a *prima facie* case of unconstitutional discrimination sufficient to require the State to call attention to some justification for the disparities. See *Moss v. Burk-*

hart, 207 F. Supp. 885, 891 (W.D. Okla.); *Lisco v. McNichols*, 208 F. Supp. 471, 477-478 (D. Colo.).

The usual standard for judging the constitutionality of legislative classifications is whether the differentiation is arbitrary and unreasonable. *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415; *Lindsley v. Natural Carbonic Co.*, 220 U.S. 61, 78-79; *McGowan v. Maryland*, 366 U.S. 420, 425-426; *Phillips Chemical Co. v. Dumas School District*, 361 U.S. 376, 385; *Morey v. Doud*, 354 U.S. 457, 463, 464. "The Constitution in enjoining the equal protection of the laws upon States precludes irrational discrimination as between persons or groups of persons in the incidence of a law." *Goesaert v. Cleary*, 335 U.S. 464, 466. A State "cannot play favorites * * * without rhyme or reason." *Ibid.* Nor is it sufficient, at least as to legislation affecting personal liberty, that a classification may have an intelligible foundation. In *Griffin v. Illinois*, 351 U.S. 12, where the State required all criminal defendants, including indigents, to pay the cost of transcripts which were often necessary to take full advantage of the right of appeal, this Court held that the result was arbitrary discrimination against the poor. Similarly, in *Brown v. Board of Education*, 347 U.S. 483, the Court held that a state system of separate-but-equal schools violated the equal protection clause. The criterion is not only whether the differentiation between persons or groups of persons has an intelligible basis, but whether that classification can reasonably be found adapted to some permissible social, economic, political, or moral objective of state policy.

The due process clause¹⁷ incorporates similar standards. "If the laws passed are seen to have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied * * *." *Nebbia v. New York*, 291 U.S. 502, 537. In *Polko v. Connecticut*, 302 U.S. 319, Mr. Justice Cardozo described "due process" in terms to which the Court has repeatedly adverted: it protects rights "found to be implicit in the concept of ordered liberty" (*id.* at 325); which, if abolished, would "violate a 'principle of practice so rooted in the traditions and conscience of our people as to be ranked as fundamental'" (*Snyder v. Massachusetts*, 291 U.S. 97, 105) (302 U.S. at 325); and which "violate those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions'" (*Hebert v. Louisiana*, 272 U.S. 312, 316) (302 U.S. at 328).

Under any of these formulations, serious discrimination, particularly in voting, offends the due process clause. Certainly, the right to fair participation in the choice of one's own government is "of the very essence of a scheme of ordered liberty" and is a fundamental principle of liberty and justice lying "at the base of all our civil and political institutions." Arbitrary discrimination by the State in relation to the election of statewide officials is destructive of the

¹⁷ Appellees asserted the due process claim in the complaint attacking the Neill Act (R. 11) and in the amended complaint attacking the 1962 Act (R. 80), but the court below did not reach the issue.

essential value of the right to vote: effective participation in democratic government.¹⁸

It has been argued that the Fourteenth Amendment must either require exact equality among voters or else impose no restrictions upon a State. Although the former alternative may be the proper rule, at least in the case of the election of candidates for statewide office, laying it to one side does not force the conclusion that there are no applicable constitutional limitations. The equal protection clause prohibits only arbitrary discrimination—differentiation without rhyme or reason, or not reasonably related to a permissible state objective. Obviously the latter branch of the principle calls for taking into account the severity of the discrimination. For example, a purpose to assure geographical dispersion of support for statewide officials, as opposed to election through the solidly massed votes of landslide majorities in one or two cities, might conceivably justify a unit system under which each county was assigned units proportionate to its population; but that aim would not justify systematic dilution of the votes of urban and suburban citizens below their numerical proportion. Similarly, even if the desire to recognize such historical and political entities as towns or counties would support a modest departure from *per capita* equality of representation in apportioning seats in a single house of a legislature, it could not rationally be

¹⁸ In *Harris v. Shawnee*, No. 90, 476, District Court, Shawnee County, Kansas, decided July 26, 1962, the court concluded that an unreasonable and arbitrary apportionment of seats in a state legislature is repugnant to the due process clause.

thought to be so overwhelming a need as to justify a total departure from the democratic principle that all voters are equal.

Nor is it a serious objection that the familiar tests long applied by this Court under the equal protection and due process clauses do not yield precise mathematical yardsticks when applied to legislative apportionment and the electoral process. The inevitable lack of mathematical precision—the inescapable fact that the line between two very close cases often seems to rest upon fiat rather than reason—may be more apparent here because apportionment and elections deal with numbers, but the problem pervades American constitutional law.^{18a} Those who demand precise standards for exact mathematical measurement of any apportionment or step in electoral machinery forget that neither the equal protection nor

^{18a} For example, the answer to the constitutional question whether a man has received a "speedy and public trial" as required by the Sixth Amendment must ultimately be measured in terms of an exact number of days' delay, but no one has ever suggested that the Court should undertake to state a mechanical rule or that no substantive right can be recognized because a trial after, say, 185 days is speedy but a delay of 186 days, under the circumstances, would violate the constitutional rights of the accused. As Mr. Justice Holmes said in *Louisville Gas Co. v. Coleman*, 277 U.S. 32, 41: "When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other."

due process clause has ever been reduced to a mechanical yardstick. The answers must be found in case-by-case adjudication based upon constitutional practice, history, analogy to past adjudication, and an appreciation of the long-range ideals at the base of our civil and political institutions, using the established criteria outlined above.

Without endeavoring to foresee, and much less to resolve, all the questions that may arise we submit that the application of the foregoing principles establishes at least two minimal but useful requirements with respect to state legislative apportionment and the electoral system.

First, any apportionment or electoral system that produces utterly capricious divergencies in voting power, defying any intelligible explanation, violates both the equal protection and the due process clauses of the Fourteenth Amendment. The principle is illustrated by the Tennessee apportionment that came before the Court in *Baker v. Carr* where the elapse of 60 years and vast shifts in population since the last apportionment had produced a crazy-quilt of voting power lacking any justification. See *Baker v. Carr*, 369 U.S. 186, 226; see also *id.* at 258 (Justice Clark concurring); *Baker v. Carr*, 206 F. Supp. 341 (M.D. Tenn.) (on remand); *Moss v. Burkhardt*, 207 F. Supp. 885, 891 (W.D. Okla.). The condemnation of utterly irrational methods of apportionment, based upon neither intelligible principle nor practical accommodation between conflicting principles, but resulting only from inaction or the exercise of sheer

power, would go far to remedy the worst instances of malapportionment.

Second, the equal protection and due process clauses condemn any legislative apportionment or electoral system that imposes an extreme and invidious discrimination against any class of voters. By "invidious" we mean discrimination that is unsupported by any objective or justification which is properly relevant to the purposes of the legislative or electoral process. *Gomillion v. Lightfoot*, 364 U.S. 339, was such a case, although decided under the Fifteenth Amendment. See also *Scholle v. Hare*, 367 Mich. 176, 16 N.W. 2d 350, pending on appeal *sub nom. Beadle v. Scholle*, No. 517, this Term (Justice Souris concurring); *Maryland Committee for Fair Representation v. Tawes*, 228 Md. 412, 180 A. 2d 656, 688, pending on appeal, No. 554, this Term. The present case, as we now show, not only helps to illustrate the second of these propositions but further demonstrates its validity.

B. THE GEORGIA COUNTY UNIT PLAN FOR CHOOSING CANDIDATES FOR STATEWIDE OFFICE RESULTS IN SYSTEMATIC, UNREASONABLE, AND THEREFORE UNCONSTITUTIONAL, DISCRIMINATION AGAINST VOTERS IN POPULOUS COUNTIES.

1. *The Georgia county unit plan results in gross and systematic discrimination against voters in every large or populous county*

The plain purpose and effect of the Georgia County unit system, as amended in 1962, are to dilute the votes of residents in Georgia's large or populous counties and to multiply the weight of votes in the smaller and less populous counties. The larger the

population of the county in which a man lives the smaller is the weight of his vote in selecting candidates for statewide offices.

The discrimination is accomplished in two steps. First, it is provided that the candidate who receives the highest number of votes in a county shall be given all the units assigned to that county, and the successful candidate is the one who receives a majority, not of the popular vote, but of the unit vote.¹⁹ Second, units are assigned in a manner that discriminates against the larger and more populous counties. The amended statute assigns two units to every county with 15,000 people or fewer, a third unit for the next 5,000 people, a fourth unit for the next 10,000 people, a fifth unit for the next 15,000, a sixth for the next, and thereafter two units for each additional 30,000 people. See Appendix A, *infra*, pp. 65-71.

The immediate result of this imbalance is that less than one third of the voters in Georgia cast a majority of the unit votes, and can thus determine who shall be the Governor, Senators, and other statewide officials. The 50.4 percent of the people of Georgia living in the fifteen most populous counties have only 32 percent of the unit votes. Fulton County, with

¹⁹ If a candidate received, in the first primary, both a majority of the unit votes and of popular votes actually cast, he would be elected. If no candidate received a majority of both unit and popular votes, a second primary was to be held between the candidate receiving the highest number of unit votes and the candidate receiving the highest number of popular votes. The candidate receiving the highest number of unit votes in this second primary would be elected.

556,326 people, has 14.11 percent of the State's population but only 7.02 percent of the unit votes.

The extent of the discrimination against voters in populous counties can be illustrated by a few specific comparisons. A vote in Crawford County, population 5,816, with 2 units, is worth almost five times a vote in Fulton County, population 556,326, with 40 units. A vote in Echols County, population 1,876, with 2 units, is worth 14 times a vote in Fulton County. Nor are these isolated examples. The following table shows the disparity for six counties of representative size (R. 49-53): The four largest counties are limited to one unit, on the average, for each

| County | Population | Units | Population Per Unit | Ratio of voting Strength |
|---------------|------------|-------|---------------------|--------------------------|
| Fulton..... | 556,326 | 40 | 13,908 | 1.00 |
| Bibb..... | 141,249 | 12 | 11,770 | 1.18 |
| Lowdnes..... | 49,270 | 6 | 8,211 | 1.69 |
| Decatur..... | 25,203 | 4 | 6,301 | 2.21 |
| Crawford..... | 5,816 | 2 | 2,908 | 4.78 |
| Echols..... | 1,876 | 2 | 938 | 14.83 |

12,889 people. The eleven smallest enjoy one unit for each 1,715 people. The resulting ratio is $7\frac{1}{2}$ to 1. The 116 smallest counties whose total population is just about equal to the 1,160,030 people in the four largest counties enjoy 251 unit votes, against 90 for the four largest counties, a ratio of almost 3 to 1. In short, regardless of the basis of comparison, the current Georgia county unit plan systematically and grossly discriminates against voters in populous counties in statewide primary elections. The total control in the hands of voters residing in the less populous

counties is scarcely weakened by the fact that the system applies only to primary elections. For, as a matter of history, Democratic candidates have been elected, without exception, to every statewide office in Georgia since Reconstruction. Indeed, between 1900 and the current year, no other party has even nominated candidates in the general election.

2. *Gross and systematic discrimination against urban and suburban voters violates the Fourteenth Amendment*

The general constitutional principles discussed earlier in this brief make it plain that the equal protection and due process clauses condemn any discrimination that bears no reasonable relation to a permissible goal of state policy. See *supra*, pp. 36-38. A man's residence or the number of his neighbors is as irrelevant to his entitlement to vote as his wealth is irrelevant to his right to an effective appeal or his race or color to equal schooling. *Griffin v. Illinois*, 351 U.S. 12; *Brown v. Board of Education*, 347 U.S. 483. Political equality is one of the fundamental ideals of American life. A State may not favor rural against urban voters without rhyme or reason, nor out of the bold wish to preserve ancient political power. We know of no evidence that the people of the populous counties are half as intelligent or half as important as the voters in the less populated areas. In the absence of such evidence, the geographical discrimination is as invidious as discrimination among voters because of creed, height, weight, or national origin.

Discrimination against urban and suburban voters in statewide elections is condemned by constitutional

practice. Every State except Georgia, Mississippi, and Maryland tabulates all ballots equally and declares the candidate chosen by a majority or plurality the winner. Mississippi and Maryland, like Georgia, follow a county unit system, but whatever their validity, the Mississippi and Maryland election laws do not set up so systematic and so extreme discrimination against every citizen in a populous county, in favor of every citizen in a little county or one that is sparsely settled. At earlier times some statewide officials were not chosen by direct popular vote, but we know of no support in constitutional practice or history for systematically devaluating urban and suburban votes in statewide elections. Nor do appellants cite any constitutional provision or statute from any State, at any time in history, that gave voters in cities and large towns one-seventh the vote of a rural citizen in choosing an official to occupy statewide office.

The federal electoral college is not a precedent for the Georgia statute. In the first place, the weighting of votes in the electoral college never approaches the systematic discrimination under the Georgia county-unit system. At present, in the electoral college a majority is 270 votes. The 40 States with the smallest populations will cast 270 electoral votes; they have 43.21 percent of the population. In Georgia 31 percent of the population controls a majority of the unit votes. In the electoral college, New York, the largest State in the 1960 census, had 9.35 percent of the population; it has 7.99 of the electoral votes. In Georgia, Fulton County

has 14.11 percent of the population and only 7.02 percent of the unit votes.

Second, the electoral college is not analogous because it resulted from compromises which were required at the Constitutional Convention in 1787 in order for sovereign States to join in a new Nation. These compromises were made a part of the Constitution itself and are not affected by the Fourteenth Amendment. On the other hand, the counties in Georgia were never sovereign but are the creatures of the State. There is nothing in the federal Constitution even suggesting that the Fourteenth Amendment does not fully apply to efforts by Georgia to discriminate against voters in some of these counties. Cf. *Sims v. Frink*, 208 F. Supp. 431 (M.D. Ala.), pending on appeal *sub nom. Reynolds v. Simms*, No. 508, this term; *Mann v. Davis*, E.D. Va., decided November 28, 1962, and McKay, *Reapportionment and the Federal Analogy* (1962), rejecting the analogy between the upper house of a state legislature and the United States Senate.

• There is no merit to appellants' suggestion that the gross discrimination against city and suburban voters is justified by the desire to distribute voting strength throughout the State. We recognize that in *MacDougall v. Green*, 335 U.S. 281, 283, the Court upheld a statute requiring a candidate of a new political party for statewide office to obtain a specified number of signatures on his nominating petitions in 50 of the 102 counties in Illinois, upon the ground that—

It is allowable State policy to require that candidates for state-wide office should have sup-

port not limited to a concentrated locality. This is not a unique policy.

The decision has no weight here because the opinion carefully distinguished between "a proper diffusion of political initiative," which the statute secured, and the full opportunity that Illinois secured to the citizens of heavily populated counties "for exerting their political weight at the polls." *Id.* at 284.

Furthermore, there is no rational relationship in Georgia between the desire for geographical diffusion of political support and gross devaluation of the votes of urban and suburban citizens. In Georgia there is no danger that the massed votes in a single metropolitan area could dominate the entire State because of a landslide metropolitan vote for a single candidate. Fulton County, the largest, has only 14 percent of the population. Fulton, DeKalb, Cobb, and Clayton counties, the four counties including and surrounding Atlanta, have less than 24 percent of the population. The other populous counties are widely scattered, as shown by the table in the margin.²⁹ And even if it is constitutional to preserve the influence of rural voters in a statewide election against the weight of heavy majorities in a few districts where the popula-

²⁹ Other populous counties are as follows:

| County | Population | Location |
|---------------------|------------|----------------------|
| Bibb (Macon) | 141, 249 | Central |
| Chatham (Savannah) | 188, 299 | Extreme east |
| Dougherty (Albany) | 75, 680 | Southwest |
| Floyd (Rome) | 69, 130 | Northwest |
| Muscogee (Columbus) | 158, 623 | Extreme west-central |
| Richmond (Augusta) | 135, 601 | Extreme east-central |

tion is denser, this could be accomplished by a system that gave each county a unit vote proportionate to its population. Any need for geographical diffusion is therefore utterly inadequate to justify Georgia's hostile discrimination against voters in populous counties scattered from side to side and from one end of the State to the other.²¹

The dilution of votes in a statewide election for Governor or Senator cannot be justified by the considerations often cited in defense of legislative apportionments that deny voters numerical equality of representation. The practical exigencies resulting from the need to limit the size of a deliberative body are inapplicable. While the composition of such a body may recognize a need for geographical distribution of representatives or reflect the identity of cohesive political entities, the election of a Governor by popular balloting does not call for debate and deliberation between representatives who might conceivably speak for different kinds of interests. In the latter case there is no need to choose between possible theories of representation.

Nor can it be said that the dilution of urban and suburban, and the enhancement of the value of rural

²¹ There are also gross disparities in the weight given to voters in the same geographical areas. In central Georgia, Bibb County, with a population of 141,249 was given one unit vote per 11,770 persons, while neighboring Crawford County, with a population of 5,816, has one unit vote per 2,908 persons. In southern Georgia, Echols County, with a population of 1,876 has one unit vote per 938 persons, while adjoining Lowndes County, with a population of 49,270, has one unit vote for 8,235 persons. See also the Brief for the Appellee, pp. 22-23.

votes in the selection of statewide officials is merely a modest recognition of the interests of rural areas in one aspect of state government. In Georgia the same discrimination pervades the legislative apportionment and, in some instances, the selection of Congressmen. A resident of Fulton County had only one hundredth the representation of a voter in Echols County in the lower house of the legislature. Voters in counties having only 22 percent of the total population elected a majority of the lower house and voters from districts having only 21 percent of the population elected a majority of the State Senate.²² On the other hand, the eight most populous counties, with 41 percent of the population, elected less than 12 percent of the lower house, and the 12 most populous senatorial districts, with 56 percent of the population, elected only 22 percent of the Senate.²³

²² In multi-county districts, the office of State Senator was rotated between the various counties and only voters in the county which was to furnish the candidate in the particular year could vote in the primary. Thus, if the existing apportionment had been applied in the 1962 election, voters in counties with 6 percent of the population would have nominated a majority of the State Senate.

²³ The composition of the state legislature is described in *Toombs v. Fortson*, 205 F. Supp. 248 (N.D. Ga.). In that case, a three-judge court held that at least one house of the Georgia legislature must be apportioned according to population and that the rotation of Senate seats among the counties in a particular district was unconstitutional. As a result, on October 5, 1962, the governor of Georgia signed a bill reapportioning the Georgia Senate. The 54 districts now vary in population from 57,000 to 82,000, and the nine most populous counties, with 43 percent of the population, elect 43 percent of the Senators. *Atlanta Constitution*, October 6 and 7, 1962. The lower house remains unchanged.

In most States where there is discrimination in the legislature against populous counties, it is at least partially balanced by the influence of the voters in such counties in electing the Governor and other statewide officials. Since the vote of every voter is counted equally, holders of statewide offices normally represent the wishes of the State as a whole. In Georgia, however, the county unit system has given the less populous rural counties control of every branch of state government: the Governor and other elected statewide officers; the legislature; and all state officials appointed by the governor, with or without the consent of the legislature. Since Georgia has no initiative and referendum and constitutional amendments can be passed only by two-thirds vote of the legislature, there is no way that domination of Georgia government by a rural minority can be ended except through the courts.²⁴

The less populous counties also have disproportionate power in electing Georgia's representatives in Congress. The population of Georgia's Congressional districts varies between 824,000 in the Fifth District, covering Atlanta and most of its suburbs, to a low of 272,000. This discrepancy of over three to one is among the greatest in the country. In addition, Georgia was alone in permitting the use of a county unit system within a single Congressional district. In the Fifth District, for example, Fulton and De Kalb

²⁴ Numerous attempts were made in the legislature prior to *Baker v. Carr* to change the county unit system to discriminate less severely against voters in the populous counties. All were ^{un}successful.

Counties with populations of 556,326 and 256,782 respectively, had 6 unit votes each, while Rockdale County with 10,572 population had 2 unit votes. Thus, Fulton County, with a substantial majority of the population of the district, had a minority of unit votes. The result was that candidates with a minority of votes could be, and were in fact, elected.²⁵

Appellants argue (Br. 47-48) that the rural minority may be singled out for preferential treatment—to put it another way, that the urban majority may be subjected to adverse discrimination—because opportunities for political organization and hence for concerted group action are available in urban areas which are not similarly present in the rural counties. More specifically, appellants state: (1) that urban voters are able to make their weight felt in spite of their inferior voting strength, and (2) that opportunities are available in urban areas, unlike the rural counties, for regimentation along “group-interest” lines.

²⁵ The system of electing Congressmen in Georgia is described in *Wesberry v. Vandiver*, 206 F. Supp. 276 (N.D. Ga.), pending on appeal, No. 507, this Term. The unit system was applied within some, but not all, of Georgia's Congressional districts at the option of local officials of the Democratic Party. These officials determined, however, not to apply it in any district in the 1962 election and therefore all of Georgia's Congressional seats were determined on the basis of popular vote. However, the serious discrimination against urban voters because of the population discrepancy between districts continues. In *Wesberry v. Vandiver*, a three-judge federal court dismissed a complaint challenging the apportionment of Georgia's Congressional districts on the ground of a want of equity.

There is no evidence to support the contention that urban voters are able to make their weight felt despite the discrimination against them. Indeed, the State of Georgia, by the county unit system as it existed before the decision below, absolutely prevented populous counties from having their fair share in the election of their executive officials, and this discrimination could not possibly have been offset by better political organization. Moreover, with the revolution in transportation and communication,²⁷ rural areas are not lacking in opportunity for political organization. Assuming that there are some disadvantages in political organization which persons in rural areas may suffer as compared to persons in urban areas, other remedies are available—for example, subsidizing candidates who secure a certain number of signatures so that they can better publicize their views throughout the State.

Appellants' argument that urban residents vote along group interest lines is also factually unsupported. "Bloc voting," i.e., predictable voting, appears to be as prevalent in rural areas as in cities. See *One Man—One Vote*, *supra*, p. 7. Indeed, it may be argued with force that rural areas, with a less heterogeneous population and a closer identity of interest, have greater social pressures leading to political cohesion than do urban areas. See Emerson, *Malapportionment and Judicial Power*, 72 Yale L. J. 64, 73 (1962). And, as the affidavit of former Mayor

²⁷ Many politicians feel that it is easier to make news and get one's name known in country areas than in cities. See *One Man—One Vote*, *supra*, p. 7.

Hartsfield states, there is every reason to believe that the county unit system itself has a divisive effect and creates sectional and group interest blocs (R. 122-126). See also Cornelius, *The County Unit System of Georgia: Facts and Prospects*, 14 *Western Political Quarterly* 942, 948 (1961).

Moreover, it is incompatible with our political institutions to suggest that voting along economic or other lines of interest is an evil which a state legislature may attack by reducing the value of the votes of the members of the group. Thus, in *Gates v. Long*, 172 Tenn. 471, 113 S.W. 2d 388, the court considered the validity of a county unit system which had been instituted in Tennessee in order to diminish the impact of so-called "bloc voting" in Shelby County. The Tennessee Supreme Court, in ruling the system unconstitutional, stated (172 Tenn. at 478-479, 113 S.W. 2d at 391):

In our form of government a large vote in a constitutional election cannot be regarded as an evil, and dealt with as such under the police power of the state. On the contrary, universal exercise of the right of suffrage must be regarded as the ideal support of democratic institutions. * * * restraint upon plenary participation, and the effect of such participation in a primary election, as well as in a regular election, is destructive of the very basis of either system. * * * Discrimination against the citizens of a particular county cannot be sustained on the bare ground that they took a large part in a primary election.

More fundamentally, the notion that any particular "community of interest" should be accorded greater voting strength than the number of people comprising the community warrants is inconsistent with basic democratic ideals. See Emerson, *Malapportionment and Judicial Power*, 72 Yale L.J. 64, 73 (1962); *One Man—One Vote*, *supra*, pp. 8-9. If one minority, such as rural voters, is to be guaranteed greater political power, there is no reason why other minorities, such as labor union members, businessmen, Catholics, Negroes, suburbanites, slum-dwellers, and persons over 65, should not have similar rights. The argument made on behalf of appellants comes down to the proposition that a State should be free to select a particular minority for preferential treatment in voting without any criteria whatever for making the selection. And if it may favor one, it may repress another. This, we submit, is the very essence of the arbitrariness that both equal protection and due process condemn.

Gross discrimination against populous areas and the arbitrary enhancement of the political power of rural voters not only subverts democratic principles generally; it also has the effect of precluding the States from meeting burgeoning needs resulting from the transformation of the basic character of our society from predominantly rural to predominantly urban.²⁶

²⁶ In 1900, at least sixty percent of all Americans lived on farms or in small rural communities, and less than forty percent were city dwellers. Today approximately seventy percent of the people live in urban or suburban areas and the rural population has diminished to about thirty percent. Merry, *Minority Rule: Challenge to Democracy*, Christian Science Monitor, October 2, 1958, reprinted in 106 Cong. Rec. 13836 (daily ed.).

See U.S. Commission on Intergovernmental Relations, Report to the President (1955), p. 3. It is widely agreed that the pressing domestic problems stemming from the metropolitan population explosion—housing, urban renewal and slum clearance, education, transportation, juvenile delinquency, water and air pollution—are not being adequately met. *Id.* at 38; *The Exploding Metropolis*, written by the Editors of *Fortune* (1957), p. 1. The failure is reflected not merely in unresponsiveness to special urban needs and lack of sympathy for the urban point of view, but also in affirmative action rendering it more difficult for urban areas to meet their own problems. This action takes such forms as systematically discriminatory taxation of under-represented, generally urban, areas as contrasted with over-represented rural areas; far greater *per capita* spending by the State in over-represented rural areas than in the urban areas; and the denial even of the urban areas' proportionate share of matching funds provided by the federal government. In addition, the state legislatures have frequently refused to give populous urban centers adequate authority to enable them to solve pressing local problems themselves.

Another result of the discrimination is that urban governments now tend to by-pass the States and enter directly into cooperative arrangements with the national government in such areas as housing, urban development, airports, and water pollution facilities. This multiplication of national-local relationships reinforces the debilitation of state governments by weakening the States' control over their own policies

and their authority over their own political subdivisions. The 1955 Report of the U.S. Commission on Intergovernmental Relations (The Kestnbaum Commission, whose members were appointed by the President) cautioned (p. 40) that "the ultimate result * * * may be a new government arrangement that will break down the constitutional pattern which has worked so well up to now." After hearings on the Kestnbaum study extending over a period of three years, the House Committee on Government Operations emphasized in its final report that "there is a strong national interest in encouraging vigorous and responsible State and local government." H. Rep. No. 2533, 85th Cong., 2d Sess., p. 47.

III

THE GEORGIA COUNTY UNIT SYSTEM IS INVALID UNDER THE FOURTEENTH AMENDMENT EVEN IF IT IS FOLLOWED PURSUANT TO A RULE OF A POLITICAL PARTY, RATHER THAN A STATUTE

Until the injunction was issued by the district court, the county unit system was operative by virtue of both the 1962 statute and a rule of the Democratic Party. The Party rule provided, like the Neill Primary Act before it was amended in 1962, that two unit votes were to be given for each representative from a particular county in the lower house of the legislature (Pl. Ex. 7, pp. 19-20, 22; R. 83). Thus, invalidation of the 1962 statute did not resolve the entire controversy. In addition to declaring the 1962 law unconstitutional, the district court enjoined appellant officials of the Democratic Party from conducting any

primary election on the basis of that law or under any Party rule which did not meet specified conditions (see the Statement, *supra*, p. 16; R. 204). It is necessary therefore to determine whether the injunction is proper insofar as it restrains appellants from acting pursuant to the party rule.

We recognize, of course, that the Fourteenth Amendment only reaches conduct which "may fairly be said to be that of the States." *Shelley v. Kraemer*, 334 U.S. 1, 13; accord, *Civil Rights Cases*, 409 U.S. 3; *Burton v. Wilmington Parking Authority*, 365 U.S. 715. But the conduct of a party primary is not "private" action free from constitutional restraints merely because that primary is conducted pursuant to party rule. *Terry v. Adams*, 345 U.S. 461; *Smith v. Allwright*, 321 U.S. 649; *United States v. Classic*, 313 U.S. 299, 310-314; *Baskin v. Brown*, 174 F. 2d 391 (C.A. 4); *Rice v. Elmore*, 165 F. 2d 387 (C.A. 4), certiorari denied, 333 U.S. 875.

In the *Classic* case, the Court held that a primary election came within Article I, Section 2, of the Constitution (313 U.S. at 314):

Interference with the right to vote in the Congressional primary in the Second Congressional District for the choice of Democratic candidate for Congress is thus, as a matter of law and in fact, an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance, since it is at the only stage when such interference could have any practical effect on the ultimate result, the choice of the Congressman to represent the district. The

primary in Louisiana is an integral part of the procedure for the popular choice of Congressman. The right of qualified voters to vote at the Congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice.

In *Smith v. Allwright*, this Court made clear the nexus between the operation of a party primary and the commands of the Constitution applicable to state action (321 U.S. at 664):

If the State requires a certain electoral procedure, prescribes a general election ballot made up of party nominees so chosen and limits the choice of the electorate in general elections for state offices, practically speaking, to those whose names appear on such a ballot, it endorses, adopts and enforces the discrimination against Negroes, practiced by a party entrusted by Texas law with the determination of the qualifications of participants in the primary. This is state action within the meaning of the Fifteenth Amendment. *Guinn v. United States*, 238 U.S. 347, 362.

And, in *Terry v. Adams*, the Court held that State action was involved in an election to choose nominees for the Democratic primary election. The Court relied on two facts: that the pre-primary was closely regulated by state law and that the pre-primary election in practical effect constituted the election since invariably the persons chosen prevailed in the primary and general election. 345 U.S. at 469, 473-476, 482-484.

The Georgia primary election was specifically considered in *Chapman v. King*, 154 F. 2d-460 (C.A. 5),

certiorari denied, 327 U.S. 800. There, the Court of Appeals for the Fifth Circuit concluded that the primary election in Georgia is such an essential part of the total election process, its conduct and management is so closely supervised by state law, and its effect is so clearly determined by statute that the action of the party in the conduct of its primaries constitutes state action under the Fourteenth Amendment (154 F. 2d 463-464):

The State collaborates in these ways: It prohibits anyone to participate in any primary or convention of any political party who is not a qualified voter. Georgia Code, § 2-408, Constitution, Art. II [since repealed] Sect. 4, Par. 8. The State furnishes its list of registered voters and these voters alone are declared entitled to vote in primaries as well as in general elections. Georgia Code, § 34-405. And the State registrars are required to be at the court house during the voting hours of the primary as fixed by law § 34-2001a, to make corrections in the list [since repealed] § 34-411 (Supplement). The State requires the party to select election managers, and requires each manager to take an oath that he will fairly and impartially and honestly conduct the election according to the provisions of law. § 34-3201. If a voter is challenged, they are required to administer to him an oath that he is duly qualified to vote "according to the rules of the party, and according to the election laws of this State". § 34-3202. All the laws in reference to the qualification of voters and their registration are applied to primaries, and "No person who is not a duly qualified and registered

voter according to law and *who is not also duly qualified in accordance with the rules and regulations of the party holding the same*, shall be entitled to vote in any such primary election." § 34-3218. If the challenged voter swears falsely, the State will punish him. § 34-9925. No one but a sworn manager can have any part in receiving or counting the votes. § 34-3205. The managers must turn over tally sheets, lists of voters, ballots and other election papers to the Clerk of the Superior Court to be kept under seal until the next grand jury meets if no contest is filed. § 34-3207. The managers are indictable for violation of their duty. § 34-9922, 34-9923. Generally all penal laws touching elections are extended to primaries. § 34-9933, Supplement; and § 34-9907.

* * * * *

We think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary and puts its power behind the rules of the party. It adopts the primary as a part of the public election machinery.

Thus, it is clear that, as in *United States v. Classic*, *Smith v. Allwright*, and *Terry v. Adams*, the primary election in Georgia is closely regulated by state law. Moreover, as in those cases, the Democratic primary for statewide offices in Georgia has determined the outcome of the general election—every person elected since the Reconstruction era has been the candidate of the Democratic Party chosen in the primary. In short, under the decisions of this Court,

the primary election in question constituted state action within the purview of the Fourteenth Amendment, whether conducted pursuant to state statute or party rule. Since, as we have seen, this state action violated the equal protection and due process clauses, the district court properly enjoined appellants from doing pursuant to party rule what they could not do under state statute.²⁸

IV

THE DECREE SHOULD BE MODIFIED TO DELETE ITS ADVISORY PROVISIONS

The decree entered by the court below enjoined the conduct of primary elections under a county unit system prescribed by state law or party rule, unless the units were proportionate to population or involved no greater inequality than that prevailing in the electoral college or under the "equal proportions" system for representation of the States in Congress (R. 202-203). In formulating the conditions under which a county unit system would be upheld, the decree reached beyond the statute and party rule, and therefore beyond the situation directly before the court. We believe that the court below should not have undertaken to rule upon more than the electoral arrangements under the statute before it.

²⁸ Indeed, even where all the primary laws of a State were repealed, and a primary was thereafter held under rules prescribed by the party, which were essentially the same as those embodied in the state laws, the Fifteenth Amendment has been held applicable. *Rice v. Elmore*, 165 F. 2d 387 (C.A. 4), certiorari denied, 323 U.S. 875.

As declared many years ago, the Court "is bound by two rules, to which it has rigidly adhered, one, never to anticipate a question of constitutional law in advance of the necessity of deciding it; the other never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied." *Liverpool, New York and Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39. And see, *e.g.*, *United States v. Raines*, 362 U.S. 17, 21. In the present case it is sufficient to hold that the 1962 Georgia statute is unconstitutional and to enjoin appellants from conducting a primary election pursuant to it or to a rule of the Democratic Party with similar provisions. No other question is presented. Appellants have not threatened any other course of conduct under a different county unit system. Neither the parties nor the Court can presently foresee what action the legislature will take or whether it will give rise to a controversy. To adjudicate the constitutionality of a specific plan that the legislature has not adopted would seem to run the risk of interference in the political process and to have many of the dangers of an advisory opinion.

Accordingly, the order of the district court should be modified merely to prohibit appellants from conducting a primary election pursuant to the state statute, as amended in 1962, or to the rules of the Democratic Party of April 18, 1962 (which had the same provisions as the state statute before it was amended in 1962) (Pl. Ex. 7, pp. 19-22; R. 83) or any other party rules as discriminatory as the 1962 statute. This Court, of course, has the power to

modify, as well as to affirm or reverse, a decree. 28
 U.S.C. 2106; *Hague v. C.I.O.*, 307 U.S. 496, 518.

CONCLUSION

We respectfully submit that the order of the district court should be modified to enjoin appellants from conducting any primary election according to the county unit system as provided either in the 1962 statute or the 1962 rules of the Georgia Democratic Party. In all other respects, the judgment below should be affirmed.

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DECEMBER 1962.

APPENDIX A

*Neill Primary Act of 1917, as amended by the
Act of April 27, 1962:*

Ga. Code Ann., § 34-3212. County Unit Vote.
[Ga. Laws 1962, Extra Sess. pp. 1217, 1218,
1221.] (a) Whenever any political party in
this State shall hold a primary election for
nomination of candidates for United States
Senator, Governor, Lieutenant Governor,
Statehouse officers, Justices of the Supreme
Court and Judges of the Court of Appeals,
such party or its authorities shall cause all
candidates for nominations for said offices to
be voted for on one and the same day each
year in which there is a regular general elec-
tion, on such day as now or hereafter may be
prescribed by law. Candidates for nomina-
tions to the above named offices who receive,
respectively, the highest number of popular
votes in any given county shall be considered
to have carried such county, and shall be en-
titled to the full vote of such county on the
county unit basis as more fully hereinafter
set forth.

(b) County unit votes shall be allocated
among the several counties of this State in
accordance with the following bracket system.

| <i>Population of County</i> | <i>Unit Votes</i> |
|-----------------------------|-------------------|
| 0- 15,000 | 2 |
| 15,001- 20,000 | 3 |
| 20,001- 30,000 | 4 |
| 30,001- 45,000 | 5 |
| 45,001- 60,000 | 6 |
| 60,001- 90,000 | 8 |
| 90,001-120,000 | 10 |
| 120,001-150,000 | 12 |
| 150,001-180,000 | 14 |
| 180,001-210,000 | 16 |
| 210,001-240,000 | 18 |

| <i>Population of County</i> | <i>Unit Votes</i> |
|-----------------------------|-------------------|
| 240,001-270,000 | 20 |
| 270,001-300,000 | 22 |
| 300,001-330,000 | 24 |
| 330,001-360,000 | 26 |
| 360,001-390,000 | 28 |
| 390,001-420,000 | 30 |
| 420,001-450,000 | 32 |
| 450,001-480,000 | 34 |
| 480,001-510,000 | 36 |
| 510,001-540,000 | 38 |
| 540,001-570,000 | 40 |
| 570,001-600,000 | 42 |
| 600,001-630,000 | 44 |
| 630,001-660,000 | 46 |
| 660,001-690,000 | 48 |
| 690,001-720,000 | 50 |

and for each 30,000 population in excess of 720,000 said county shall be entitled to an additional (2) unit votes.

The county unit votes hereinbefore allocated shall be allocated according to the latest federal decennial census, or any future federal decennial census as officially published from time to time.

(c) If in any county any two or more candidates should tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published at least one time in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively, who shall receive a majority of all the county unit votes, throughout the entire State, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or

other party authority, without the necessity of a formal ballot, to be the nominee of such party for the above named offices, respectively, and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all the county unit votes throughout the State, that said candidates have received an equal number of county unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and provided, however (except as hereinabove provided in case of a tie in unit votes) no political party holding a statewide primary for the nomination of candidates named in this section, as amended, shall declare any candidate for any such office the nominee of said party for such office unless such candidate shall have received in the primary a majority of all the county unit votes as hereinbefore provided for, and also a majority of all the popular votes cast in such primary. If no such candidate shall receive a majority of the county unit votes and also a majority of the popular votes cast in such primary, there shall be a second primary election for such office held in the manner provided in Section 34-3213, as amended, between the candidate receiving the

greatest number of county unit votes and the candidate receiving the greatest number of popular votes, but if the candidate receiving the greatest number of county unit votes also received the greatest number of popular votes, then the run-off shall be held between the candidate receiving the greatest number of county unit votes and the candidate receiving the next greatest number of popular votes. The results of such run-off primary election shall be determined and given effect as provided in said Section 34-3213, as amended.

(d) It shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate is placed upon the tickets or ballots of such party at the general election following such primary and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 184; 1950, pp. 79, 80; 1962).

Ga. Code Ann., §34-3213, Second Primary Election [Ga. Laws, 1962 Extra Sess., pp. 1221-1222.] In the event that a run-off Primary is required as provided in section 34-3212, as amended, such political party shall hold a second primary throughout the State on a day fixed by the State Executive Committee of the political party holding such primary, and such run-off primary shall be held between the candidates as provided in Code Section 34-3212, as amended. The vote in such run-off primary shall be consolidated and the result declared and certified within 10 days after said second

primary election, and published at least one time in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hands and seals of said chairman or secretary, and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State Executive Committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held to be the duly nominated candidates of such party for the office named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all the county unit votes of all the counties, then said State convention or the permanent chairman thereof, or the Secretary thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office: Provided further that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, pp. 183, 185; 1950, pp. 79, 82).

Ga. Code Ann., § 34-3214. Convention, when held.—In each regular election year in which a second primary shall be necessary, by reason

of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215. Special primary elections to fill vacancies.—Special primary elections to fill vacancies in any of the offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes throughout the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary elections: Provided, that if no convention of such party shall be called or held, to follow a special primary election, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party (Acts 1917, p. 188).

Ga. Code Ann., § 34-3215.1 Certificate of result of election.—Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State of this State; such certificate to be signed by the chairman and secretary of the State committee of the political party holding such primary. Said certificate

shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election (Acts 1943, p. 347).

Ga. Code Ann., § 34-3217. *Limitations.*—Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last-named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals (Acts 1917, p. 189).

Ga. Code Ann., § 34-3218. *Laws of force.*—All the laws in reference to the qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election (Acts 1917, p. 189).

APPENDIX B

A. HISTORY OF THE GEORGIA COUNTY UNIT SYSTEM

The decision of the district court (R. 185-192) and an affidavit submitted by Professor Bonner of the Woman's College of Georgia (R. 93-119) contain an extensive discussion of the history of the county unit system which we will here only briefly summarize.¹

The development of the county unit system as a method of nominating candidates for statewide office is closely tied to the principle of apportionment which Georgia has followed in its House of Representatives. From 1777 until April 27, 1962, the county unit system was based on the formula used for the apportionment of that body (R. 185). An understanding of the growth of the county unit system involves, therefore, a consideration of both the various methods that have been used for apportioning seats in the Georgia House of Representatives and of the genesis of the county unit system itself as part of the process of nominating candidates for statewide office.

¹ The history of the county unit system is also discussed in *Turnan v. Duckworth*, 68 F. Supp. 744 (N.D. Ga.), and *South v. Peters*, 89 F. Supp. 672 (N.D. Ga.). For more detailed discussions, see Saye, *A Constitutional History of Georgia, 1732-1945*; Coulter, *Georgia, A Short History*; Gosnell and Anderson, *The Government and Administration of Georgia*; Holland, *The Direct Primary in Georgia*; Rigdon, *Georgia's County Unit System*; Cornelius, *The County Unit System of Georgia: Facts and Prospects*, 14 *Western Political Quarterly* 942.

1. Apportionment of the Georgia House of Representatives

Under Georgia's first Constitution in 1777, Liberty County was allotted fourteen representatives, Glynn and Camden Counties one each, the other five counties ten each, and the Ports and Towns of Savannah and Sunbury four and two representatives respectively to represent their trade. All counties thereafter to be laid out were to have one representative, provided there were ten electors in the county. Representation in all counties was to increase to two, three, four, six, and ten when the number of electors increased to thirty, forty, fifty, eighty, and one hundred, respectively. The representatives selected the Governor and also selected from their number an Executive Council composed of two representatives from each county entitled to elect ten or more representatives. The remaining representatives constituted the "House of Assembly." Voting was by individual ballot in the assembly while the Executive Council voted by counties and not personally (R. 185-186).

After Georgia entered the Union on January 2, 1788, the Constitution of 1789 was adopted. It created a general assembly consisting of a Senate and House of Representatives. Each county elected one Senator to serve for a three-year term. The members of the House were elected annually from each of the then existing eleven counties. Camden, Glynn, Effingham, Washington, Greene, and Franklin Counties were to have two members of the House each; Burke, Liberty and Richmond to have four each; and Chatham and Wilkes five each—a total of thirty-four. The Governor was elected by the Senate every two years from three persons nominated by the House of Representatives (R. 186).

The Constitution of 1798² provided that representation in the House should thereafter be according to population, based on an enumeration to be made every seven years. The formula adopted provided that a county with 3,000 persons would be entitled to two members; a county of 7,000 persons to three members, and a county of 12,000 or over to four members, with each county to have at least one and not more than four Representatives. The Governor continued to be elected by the entire General Assembly on joint ballot. In 1823, however, the Constitution was amended and Georgia became the first Southern State to provide for the popular election of its Governor² (R. 187).

The apportionment of both houses of the legislature was again altered in 1842-1843. At that time, forty-seven senatorial districts were created, each one with one Senator. In the House, the thirty-seven largest counties each were given two members, and the remaining fifty-six, one each; the total number of Representatives was fixed at 130. A new determination of the thirty-seven largest counties was required after each census. The same basis of House apportionment was carried forward, after secession, in the Georgia Confederate Constitution, and in the Constitution of 1865, which was adopted upon cessation of hostilities and during the Presidential Reconstruction of Georgia (R. 187).

Another constitution was adopted in 1868. It provided for the three-two-one formula of apportionment in the House, which, with slight modifications made in 1877 and 1920, has been in use in Georgia ever since.

² The amendment provided that if no candidate had a majority of the votes, the General Assembly would elect the Governor by joint ballot (R. 187). Nomination continued to be by the House of Representatives.

This apportionment gave to each of the six largest counties three Representatives; the next 31 largest counties were allotted two, and the remaining 95 were given one each. The 1868 Constitution provided that this apportionment might be altered after each census period, but the aggregate number of representatives was to remain at 175 (R. 187-188).

2. *The Nominating Process in Georgia*

After 1830 the convention system became the prevalent method of nominating candidates for statewide office. *Turman v. Duckworth*, *supra*, 68 F. Supp. at 747; Rigdon, *supra*, p. 15.³ Delegates to these conventions usually were selected in mass meetings of party members in each county. The number of delegates sent by a county generally was double that of the county's representation in the lower house of the legislature. *South v. Peters*, *supra*, 89 F. Supp. at 677; Rigdon, *supra*, p. 15. The county unit basis for deciding the result in a state convention was used first by the Democratic Party in 1876 when each county at the state convention was entitled to twice as many delegates as it had representation in the lower house and was required to cast its allotted votes as a unit in the convention. Holland, *supra*, p. 46; Rigdon, *supra*, p. 16.

In 1890, the State Democratic Executive Committee recommended the use of primaries in selecting dele-

³ Rigdon notes that during the 1830's the two principal parties in Georgia were identified with Michael Troup and John Clark. At that time, factions of the Board of Trustees of the University of Georgia acted as executive committees for both the Troup and Clark parties. Nominations for the governorship were generally made by caucusing groups on commencement day in Athens in every gubernatorial year.

gates to the state convention.* Eight years later in 1898, the Democratic Party required this procedure. Delegates from each county to the state convention were to be chosen by the county executive committee from the friends of the gubernatorial candidate receiving the largest popular vote in the county, and they were required to vote for state officers in the convention according to the vote of the people in their county. Saye, *supra*, p. 357; Holland, *supra*, p. 46. Accordingly, the convention generally merely ratified the primary choices. Rigdon, *supra*, p. 23. Thus, beginning in 1898, the Georgia Democratic Party was holding statewide primaries in which nominations were determined on the basis of a plurality of county unit votes. This method continued until 1906, when the state convention eliminated the county unit system and substituted nomination by popular vote. In 1908 the state convention voted to return to the county unit system.

The county unit system was not substantially changed until the passage of the Neill Primary Act of 1917. Ga. Code Ann. 34-3212, *et seq.* Under this Act, any political party holding a statewide primary was *required* to determine the winners by application

* Saye, *A Constitutional History of Georgia*, *supra*, pp. 356-357, describes the beginnings of state regulation of primary election procedures:

"An act of 1887 prohibited the giving or furnishing of liquor within a certain distance of polling places on election/days and gave legal recognition to the existence of primaries, and an act of 1891 prescribed several regulations, but left their use optional with the political parties. Several laws on the subject were enacted during the first decade of the twentieth century including an act of 1904 making it a misdemeanor to buy votes and an act of 1908 requiring that primaries for the nomination of State officers be held on the same date in all counties. Yet primary elections continued to be governed largely by party custom and rules."

of the county unit system. The statute assigned to each county two units for each member of the House of Representatives, *i.e.*, the counties were given six, four, or two unit votes according to their population. The candidate who received a plurality of the popular votes in a particular county won all of that county's unit votes.⁵ For all statewide officers except Governor and United States Senator, the candidate who received a plurality of the county unit votes over the State as a whole won the nomination. If two candidates received an equal number of county unit votes, the candidate with the greater number of popular votes won the nomination. In gubernatorial and senatorial races, if no candidate received a majority of county unit votes, a run-off primary between the two leading candidates was required. In the run-off the candidate receiving the largest number of unit votes won.

The original complaint in this case (see the Statement *supra*, pp. 5-6) attacked the constitutionality of the Neill Primary Act. But while the proceeding was pending in the district court, the statute was amended on April 27, 1962. The provisions of the 1962 act are fully described above (pp. 11-12), and are set forth in Appendix A to this brief (pp. 65-71).

B. LITIGATION CONCERNING THE GEORGIA COUNTY UNIT SYSTEM

1. In *Cook v. Fortson*, 68 F. Supp. 624 (N.D. Ga.), the first challenge to the county unit system, the plaintiffs sought to enjoin its application to the determination of the Democratic nominee for Congress in the Fifth District of Georgia. In an election held in that district, the winner had received

⁵ In case of a tie, the county's unit votes were divided between the winners.

a majority of the county unit votes but not a majority of the popular vote. Injunctive relief was denied by the district court on the basis of *Colegrove v. Green*, 328 U.S. 549, the court stating that the inequality complained of should be left for consideration by the state legislature or by Congress under Article I, Section 4, of the United States Constitution. As an alternative basis for the decision, the court indicated that the State Democratic Executive Committee had, in effect, canceled the primary by certifying both candidates to the Secretary of State for inclusion on the general election ballot where all Democrats would be free to vote their choice on a popular vote basis. The court also expressed doubt as to whether the conduct of the primary involved "state action."

2. Meanwhile, in *Turman v. Duckworth*, 68 F. Supp. 744 (N.D. Ga.), the plaintiff challenged the use of the county unit system in the 1946 statewide gubernatorial primary, in which the candidate receiving a majority of the county unit votes did not have the greatest number of popular votes. Again, the district court denied injunctive relief on the basis of *Colegrove v. Green*. It noted also that the plaintiff had not moved to assert the invalidity of the unit system before the Executive Committee had set the primary, or before it was too late to have another primary or even a convention nomination. Upon the assumption that an appellate court might consider the merits, the court went on to recognize that the conduct of the gubernatorial primary had to meet the

*The court noted that Ga. Code Ann. 34-3217 explicitly provided that the statute should not be construed to require any definite method of choosing the nominees for members of Congress. The court therefore concluded that if the county unit system were used in a primary election for Congress it was by determination of the party, not state action.

standards of the Fourteenth Amendment. However, it said that it had not been shown that the State had deprived the plaintiffs of the equal protection of the laws. The court found that there was a rational basis for the classification of Georgia's counties and that "[o]ur system of government; State and federal, has never sought or demanded that each voter should have equal voting influence, though that might seem an ideal of democracy." 68 F. Supp. at 748. Conceding that there was a "glaring inequality" between the representation of certain counties, the court nevertheless concluded that the remedy was through changes in the law rather than appeal to the law.

This Court dismissed appeals in both *Cook* and *Turman*,⁷ citing only *United States v. Anchor Coal Co.*, 279 U.S. 812. The latter involved the dismissal as moot of a bill seeking an injunction.

3. In 1950, the county unit system was again challenged, this time before the primary was held. *South v. Peters*, 89 F. Supp. 672 (N.D. Ga.). The district court dismissed the suit, a majority of two judges sustaining the constitutionality of the statute providing for the county unit system. The court saw no discriminatory purpose behind the Neill Act, nor "any general constitutional principle forbidding or discouraging the use of territorial subdivisions in fixing the manner of conducting an election by the people. Whether subdivisions shall be made and how closely they shall be equalized is a matter of policy, that is to say, is a political question in which courts of equity may not meddle to set up their own ideas."

⁷ Justices Black and Murphy stated that probable jurisdiction should be noted and Mr. Justice Rutledge urged that the question of jurisdiction be postponed until a hearing on the merits.

Id. at 679-680. Judge Andrews, dissenting, stated that the county unit system violated the equal protection clause of the Fourteenth Amendment. This Court affirmed *per curiam*, stating merely that "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." 339 U.S. 276-277. Justices Black and Douglas dissented (see *supra*, pp. 26-27).

4. *Cox v. Peters*, 208 Ga. 498, 67 S.E. 2d 579, was a suit for damages under 8 U.S.C. 43 against Georgia election officials alleging that a voter in the 1950 gubernatorial primary had been denied full enjoyment of his right to vote by reason of the county unit system. The Georgia Supreme Court affirmed a dismissal of the suit, holding (1) that the right to vote in a gubernatorial primary was not derived from the United States Constitution, and (2) that the Georgia constitutional and statutory provisions asserted were applicable only to elections not to primaries. This Court dismissed for want of a substantial federal question, without citing any authority. 342 U.S. 936. Justices Black and Douglas dissented.

5. Finally, in 1958, a suit was brought in the federal district court to have the 1958 Democratic primary for all statewide officers enjoined on the ground that the county unit system violated the Fourteenth and Seventeenth Amendments. When the district judge refused to convene a three-judge court, the plaintiff sought a writ of mandamus from this Court to compel its convening. *Hartsfield v. Sloan*, 357 U.S. 916. The Court refused to issue the writ, the Chief Justice and Justices Black, Douglas, and Brennan dissenting.